SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 701

GASTON COUNTY, a Political Subdivision of the State of North Carolina,

Appellant

v.

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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DOCKET ENTRIES

August 18, 1966 – Filed complaint and issued summons.

August 29, 1966 – Filed request for designation of statutory three-judge Court – Gasch, D. J.

August 31, 1966 – Filed summons and return; served deft by serving same on David Bress, U. S. Attorney on August 22, 1966, and by registered mail to Attorney General August 29, 1966.

August 30, 1966 – Filed notice of appearance of Wesley E. McDonald, Dist. of Columbia Bar, as associate counsel of record for pltf.

October 20, 1966 – Filed stipulation for extension of time for deft's answer and order extending time by Walsh, J.

November 16, 1966 – Filed stipulation for extension of time for deft's answer and order extending time by Walsh, J.

December 20, 1966 – Filed stipulation for extension of time for deft's answer and order extending time by Walsh, J.

February 6, 1967 – Filed answer of deft.

February 6, 1967 – Filed certificate of service of answer on pltf.

February 6, 1967 – Cause calendared for trial U. S. District Court for District of Columbia.

February 10, 1967 – Filed order designating Wright, C. J. Robinson, C. J.; Gasch, D. J. for the hearing of a three-judge Court - Bazelon, D. J.

May 25, 1967 – Filed notice of taking of deposition by deft.

May 25, 1967 – Filed certificate of service of notice of taking depositions by deft by U. S. Mail.

May 31, 1967 – Filed notice of taking of depositions by deft.

May 31, 1967 – Filed certificate of service of notice of taking depositions by deft by U. S. Mail.

May 31, 1967 – Filed notice of taking of depositions by deft.

May 31, 1967 – Filed certificate of notice of taking of depositions by deft by U. S. Mail.

June 6, 1967 – Filed notice of taking of depositions by deft.

June 6, 1967 – Filed certificate of notice of taking of depositions by deft by U. S. Mail.

June 8, 1967 – Filed deft's pretrial statement.

June 8, 1967 – Filed pretrial statement of pltf and list of pltf's witnesses.

June 12, 1967 – Filed list of deft's exhibits and witnesses.

June 12, 1967 – Filed deft's further proposed stipulation.

June 19, 1967 – Filed stipulations of pltf and deft.

June 19, 1967 – Filed attachments to stipulations.

June 19, 1967 & June 20, 1967 – Before Wright, C. J.; Robinson, C. J. and Gasch, D. J. – Statutory Court hearing held and concluded – decision reserved.

June 19, 1967 – Filed attachment to deposition of deft's witness Arvel Lee Rayfield in Vol. 3 of deposition at p. 291.

June 19, 1967 – Filed list of pltf's exhibits A - Z and AA - TT received into evidence.

June 19, 1967 – Filed list of deft's exhibits 1 - 15 and 101 - 153 received into evidence.

June 22, 1967 – Filed list of deft's exhibits introduced into evidence at trial on June 19, 1967.

June 29, 1967 – Filed list of pltf's exhibits introduced into evidence at trial on June 19, 1967.

October 23, 1967 – Filed stipulation for extension of time and order for deft to file proposed findings of fact, conclusion of law and brief - Gasch, D. J.

October 24, 1967 – Filed pltf's proposed findings of fact and conclusion of law.

October 24, 1967 – Filed brief of pltf in support of proposed findings of fact and conclusion of law.

October 24, 1967 – Filed deft's proposed findings of fact and conclusion of law.

October 24, 1967 – Filed brief in support of deft's proposed findings of fact and conclusion of law.

November 13, 1967 – Filed deft's reply brief.

November 14, 1967 – Filed motion of extension of time for pltf to file reply brief and certificate of service on deft.

November 14, 1967 – Filed order extending time for pltf to file reply brief – Wright, C. J.

November 16, 1967 – Filed pltf's brief in reply to post-trial brief of deft.

October 16, 1968 – Filed statutory Court Opinion No. 2196-66 – denying application for declaratory judgement – Wright, C. J. and Robinson, C. J. – Concurring Opinion by Gasch, D. J.

September 13, 1968 – Filed notice of appeal to U. S. Supreme Court.

September 13, 1968 – Filed acceptance of service of notice of appeal by Frank E. Schwelb, Attorney for deft.

October 14, 1968 – Filed motion to certify original record to Supreme Court of U. S. and affidavit of personal service on counsel for deft.

October 14, 1968 – Filed order certifying original record of U. S. District Court for the District of Columbia to U. S. Supreme Court for purpose of appeal and consented to by attorneys for pltf and deft – Wright, C. J.

October 31, 1968 – Filed transcript of record of proceedings of U. S. District Court for District of Columbia in U. S. Supreme Court.

October 29, 1968 – Filed certification of record on appeal to U. S. Supreme Court.

January 13, 1969 – Filed true copy of order from U. S. Supreme Court – the statement of jurisdiction in this case having been submitted by pltf and motion to affirm having been submitted by deft and considered by the Court, probable jurisdiction noted.

IN THE

UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF COLUMBIA

GASTON COUNTY, a political subdivision of the State of North Carolina,

Plaintiff,

v. Civil Action No. 2196-66

UNITED STATES OF AMERICA,

Defendant.

[Filed August 18, 1966]

COMPLAINT IN ACTION FOR DECLARATORY JUDGMENT UNDER VOTING RIGHTS ACT OF 1965

COMES NOW the plaintiff, by and through its attorney, Grady B. Stott, for Hollowell & Stott, and for its claim for relief, alleges as follows:

I.

That this action for declaratory judgment arises under Section 4(a) of the Voting Rights Act of 1965, Public Law 89-110, 79 Stat. 437, and is brought pursuant to 28 U.S.C. Section 2201 for the purpose of determining a question of actual controversy between the parties, as hereinafter more fully appears.

II.

That Gaston County is a political subdivision of the State of North Carolina; the State of North Carolina is a sovereign State of the United States of America.

III.

That North Carolina Statutes establish certain elector qualifications as prerequisites and conditions upon which a person may become a qualified elector and may register to vote in the State of North Carolina. Such elector qualifications are set forth in North Carolina General Statutes Section 163-24; Section 163-25 and Section 163-28, which read:

> Section 163-24: "Persons excluded from electoral franchise– The following classes of persons shall not be allowed to register or vote in this state, to-wit: First, persons under twenty-one years of age; second, idiots and lunatics; third, persons who have been convicted or confessed their guilt in open court, upon indictment, of any crime the punishment of which is now of may hereafter be imprisonment in the State's prison, unless such person shall have been restored to citizenship in the manner prescribed by law."
>
> Section 163-25: "Qualifications of electors; residence defined– Subject to the exceptions contained in the preceding section, every person born in the United States and every person who has been naturalized, and who shall have resided in the State of North Carolina for one year and in the precinct, ward, or other election district in which he offers to vote, thirty days next preceding the election shall, if otherwise qualified as prescribed in this chapter, be a qualified elector in the precinct, or ward or township in which he resides; Provided, that removal from one precinct, ward or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which such person has removed until thirty days after such removal.
>
> All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

(1) That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person shall not be considered to have lost his residence who leaves his home and goes into another State or county of this State, for temporary purposes only, with the intention of returning.

(3) A person shall not be considered to have gained a residence in any county of this State, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

(4) The place where the family of a married man or woman resides shall be considered and held to be his or her place of residence; except that where the husband and wife have separated and lived apart, the place where he or she resides the length of time required by the provisions of this article to entitle a person to vote, shall be considered and held to be his or her residence.

(5) If a person remove to another State or county within this State, with the intention of making such State or county his permanent residence, he shall be considered to have lost his residence in the State or county from which he has removed.

(6) If a person remove to another State or county within this State, with the intention of remaining there an indefinite time and making such State or county his place of residence, he shall be considered to have lost his place of residence in this State or County from which he has removed, notwithstanding, he may entertain an intention to return at some future time.

(7) School teachers who remove to a county for the purpose only of teaching in the schools of that county temporarily and with the intention or expectation of returning to the county of their parents or other relatives during the vacation period to live,

and who do not have the intention of becoming residents of the county in which they have moved to teach, shall be considered residents of that county of their parents or other relatives for the purpose of voting.

(8) If a person remove to the District of Columbia, or other federal territory, to engage in the government service, he shall not be considered to have lost his residence in this State during the period of such service, and the place where such person resided at the time of his removal shall be considered and held to be his place of residence. This rule shall also apply to employees of the State government who remove from one county to another within the State, unless a contrary intention is shown by such employee.

(9) If a person goes into another State or county, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this State or county.

(10) All questions of the right to vote shall, except as otherwise provided herein, be heard and determined by the registrar and judges of election in the precinct where the question arose."

Section 163-28: "Voter must be able to read and write; registrar to administer section—Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section."

IV.

That the Attorney General of the United States of America, purporting to act under authority conferred upon him by the Congress of the United States in Public Law 89-110, 79 Stat. 437 (commonly known as the "Voting Rights Act of 1965" and hereinafter sometimes referred to as the "Act"), has determined that the provisions of North

Carolina Statutes, Section 163-24, Section 163-25 and Section 163-28 as set forth above, constitute a "test or device" within the meaning of the Act; that he has further determined that such "test or device" was in effect in Gaston County, which is the plaintiff in this action, on November 1, 1964, and that Gaston County in all respects falls within the provisions of Section 4(b) of the Act; that publication in the Federal Register as required by Section 4(b) of the Act was accomplished as to Gaston County, North Carolina on March 29, 1966 (31 Fed Reg. 5080-5081); that as set forth in the Federal Register, Volume 31, No. 60, pages 5080 and 5081, it was determined by the Attorney General of the United States that less than fifty per centum of the persons of voting age residing in the political subdivision of Gaston County, North Carolina, voted in the Presidential election of November, 1964; that the plaintiff is informed and believes and, therefore, alleges that it was determined that Gaston County fell within the provisions of the Act by virtue of the fact that less than fifty per centum of the persons of voting age residing therein voted in the Presidential election of November, 1964.

V.

That, upon such determination by the Attorney General and publication in the Federal Register, the Act, by operation of law, suspended the use of the aforementioned literacy test as set forth in the North Carolina General Statutes (Section 163-28) or any other "test or device", unless and until this Court determines that such test or qualification standard has not been used, during the five years preceding the filing of this action, for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

VI.

That no test or device within the definition of the provisions set forth in Section 4(c) of the Voting Rights Act of 1965, including any requirement provided for in North Carolina General Statutes Section 163-28, set forth above,

has been used in the plaintiff county during the five (5) years preceding the filing of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. There have been no final judgments of any Court of the United States within the five (5) years preceding the filing of this action determining that denials or abridgements of the right to vote on account of race or color through the use of tests or devices have occurred anywhere within the County of Gaston in the State of North Carolina.

VII.

That the percentages of registration and voting within Gaston County, which led to the determinations by the Attorney General and the Director of the Census as aforesaid are not as a result of any discrimination whatsoever on the part of election officials or the governing officials of Gaston County, North Carolina, nor as a result of the State laws governing registration; that under the present registration system in force and effect in Gaston County, North Carolina, the registration books are open continuously throughout the entire year; that pursuant to the Statutes under which residents of Gaston County register in elections, the registration books are open from 8:30 A.M. until 5:00 P.M. Monday through Friday of each week throughout the year at the principal office of the Gaston County Board of Elections of Gastonia, North Carolina, except twenty-one (21) days prior to an election as provided by State law; that in addition thereto persons may register with their respective registrars within their respective voting precincts within Gaston County at any reasonable hour of each day of each week, except twenty-one (21) days prior to an election as provided by State law.

VIII.

That pursuant to Chapter 163, Article 9 of the General Statutes of North Carolina, the Board of County Commissioners of Gaston County ordered and installed a modern loose-leaf registration book system in all of the voting pre-

cincts of Gaston County, and such system is now and has been in effect since 1962; that North Carolina General Statutes, Section 163-31, provides among other things:

> "Provided that in counties in which a modern loose-leaf and visible registration system has been established as permitted by G.S. 163-43, the registration books, process, or records shall, when ordered by the county board of elections and approved by a majority of the board of county commissioners be open continuously for the registration of voters or the acceptance of registration applicatons at all reasonable hours and times at the home of the registrar or the special registration commissioner or whereever the registrar or special registration commissioner may be within the county, and such registrars may register all qualified citizens of the county, and the special registration commissioners may take the registration application and administer the oath without regard to the precinct residence of the registrar, the special commissioner, or the citizen applying for registration."

That in addition to providing registration for the citizens of Gaston County throughout the year, five days each week from 8:30 A.M. to 5:00 P.M. at the principal office of the Gaston County Board of Elections and with the registrars of each voting precinct within Gaston County at all reasonable hours as aforesaid, the registrars of each voting precinct are required by order of the Gaston County Board of Elections of Gaston County, to be in attendance at the polling place at which such person acts as official registrar on designated Saturdays during the registration period prior to every major election, in order that persons may register to vote with said registrar; that the requirement of the Gaston County Board of Elections that the registrars of each voting precinct within Gaston County attend their respective polling places on designated Saturdays prior to every major election is not required by State Law, but is done solely for the convenience of those persons desiring to register to vote.

IX.

That the determinations made by the Attorney General and the Director of the Census as to the existence of a test or device, and as to the precentage of persons of voting age who were registered or who voted in November, 1964 create creates an arbitrary and unreasonable classification among persons residing within Gaston County, North Carolina; that persons of identical background and ability who reside within other counties of North Carolina, which counties have not been determined to fall within the application of Section 4 (a) and (b) of the Voting Rights Act, must continue to meet the requirements of the General Statutes of North Carolina pertaining to registration to vote; that Gaston County at no time has denied or abridged the right of any person to register to vote or to vote on account of race or color; that the determinations made by the Attorney General and the Director of the Census pertaining to voting rights in Gaston County, North Carolina, is unreasonable and arbitrary and such determination should be declared null and void.

WHEREFORE, the plaintiff prays:

1. That a statutory three-judge District Court be convened pursuant to Sections 2282 and 2284 of Title 28, United States Code and pursuant to Section 4 of the Voting Rights Act of 1965.

2. That this cause be advanced on the docket of the Court for speedy hearing thereof.

3. That this Court adjudge, decree and declare that, during the five years preceding the filing of this action the voter qualification standards as set forth in North Carolina General Statutes, Sections 163-24, 163-25 and 163-28, have not been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color and that the provisions of the Voting Rights Act of

1965 are, therefore, inapplicable in Gaston County, North Carolina.

DATED this 11th day of August, 1966.

HOLLOWELL & STOTT
By: Grady B. Stott
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Caption Omitted in Printing]

ANSWER

The defendant, by and through its attorneys, for its answer to the Complaint states and alleges as follows:

1. The defendant admits the allegations of paragraph I of the Complaint.

2. The defendant admits the allegations of paragraph II of the Complaint.

3. The defendant admits the allegations of paragraph III of the Complaint.

4. With respect to the allegations of paragraph IV of the Complaint, the defendant admits that, pursuant to Section 4(b) of the Voting Rights Act of 1965, the Attorney General made a determination that a test or device was maintained within the territory of Gaston County, North Carolina on November 1, 1964; that the Director of the Census made a determination that less than 50 per centum of the persons of voting age residing within the territory of Gaston County, North Carolina, voted in the presidential election of November, 1964; and the publication of these determinations as to Gaston County, North Carolina, was duly made in the Federal Register on March 29, 1966, at 31 Fed. Reg. 5080-5081. The defendant denies each and every other allegation in said paragraph IV of the Complaint.

5. The defendant admits the allegations of paragraph V of the Complaint.

6. The defendant denies each and every allegation of paragraph VI of the Complaint.

7. With respect to paragraph VII of the Complaint, defendant denies the allegation therein that the percentages of registration and voting within Gaston County, which led to the pertinent determinations by the Attorney General and the Director of the Census are not the result of any discrimination whatsoever on the part of officials of Gaston County, North Carolina. The defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph VII of the Complaint.

8. With respect to the allegations of paragraph VIII of the Complaint, the defendant admits that Gaston County has installed a loose-leaf registration book system in all the voting precincts of Gaston County, and that the same has been in effect since 1962, and that Section 163-31 of the North Carolina General Statutes is as set out in the Complaint. The defendant is without knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph VIII of the Complaint.

9. The defendant denies each and every allegation in paragraph IX of the Complaint.

AFFIRMATIVE DEFENSE

10. Section 101(a)(2)(A) of the Civil Rights Act of 1964, 42 U.S.C. 1971(a) as amended, provides as follows:

> (2) No person acting under color of law shall—
>
> (A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices or procedures applied under such law or laws to other individuals within the same county, parish, or similar political

subdividion who have been found by State officials to be qualified to vote;

11. Under North Carolina law, regis[illegible]on is a prerequisite for voting in all elections, includir[illegible]deral elections.

12. Prior to the effective date of the Voting Rights Act of 1965, Gaston County was required by the provisions of Section 163-28 of the North Carolina General Statutes to apply a literacy test as a prerequisite for voting.

13. During that portion of the five year period preceding the date of this action in which said literacy test was in full force and effect many citizens of Gaston County, including illiterate citizens, were permitted to register to vote without being required to demonstrate their literacy as required by North Carolina law. Under the practices actually in effect in Gaston County, literacy was not a prerequisite for voting for some citizens of the county.

14. The enforcement of the literacy requirements of Section 163-28 of the North Carolina General Statutes with respect to future applicants for registration in Gaston County, would subject such future applicants, in determining whether they are qualified under State law to vote in any Federal elections, to a standard, practice and procedure different from the standards, practices and procedures heretofore applied by Gaston County registration officials under said statute to other individuals who have been found to be qualified to vote, within the meaning of Section 101(a)(2)(A) of the Civil Rights Act of 1964, 42 U.S.C. 197(a) as amended.

WHEREFORE the defendant pray that this Court enter an order dismissing the Complaint herein and denying the relief requested in the Complaint, or any relief whatever.

JOHN DOAR
Assistant Attorney General

MACEO W. HUBBARD
Attorney
Department of Justice

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Caption Omitted in Printing]

STIPULATIONS

The parties to this action, through their respective counsel, hereby stipulate as follows:

1. Gaston County, North Carolina, is a political subdivision of the State of North Carolina. There are in Gaston County, North Carolina 43 election precincts, in each of where there is appointed a registrar of voters. These registrars are appointed by, and are employees of, the Gaston County Board of Elections. The Gaston County Board of Elections is responsible for the administration of the elective processes, including the registration of voters, in Gaston County, North Carolina.

2. Article VI, Section 4, of the Constitution of North Carolina and Section 163-28 of the North Carolina General Statutes provide, in pertinent part, as follows:

> Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Section 163-28 of the North Carolina General Statutes further provides: "It shall be the duty of each registrar to administer the provisions of this section."

3. The Attorney General of the United States has determined that a test or device as defined in Section 4 (c) of the Voting Rights Act of 1965 was maintained within the territory of Gaston County, North Carolina, on November 1, 1964; the Director of the Census has determined that fewer than 50% of the persons of voting age residing within Gaston County, North Carolina, voted in the presidential election of November, 1964. These determinations were published in the Federal Register on March 29, 1966.

4. In April, 1962, pursuant to North Carolina law, Gaston County adopted a system of voter registration known

as a permanent, loose-leaf system. At this time, Gaston County undertook a general re-registration of voters, and all persons theretofore registered to vote were required to re-register in order to be eligible to vote thereafter. Every person now eligible to vote in Gaston County, North Carolina in Federal, State or County elections, has become registered to vote during or since April, 1962.

5. The registration of voters in Gaston County is conducted both on a precinct level with one registrar of voters serving in each precinct, and county-wide at the office of the Gaston County Board of Elections.

6. Each party may take further depositions upon oral examination in this cause beginning Wednesday, June 14, 1967, until completion. Each side waives notice of the taking of such depositions.

7. Photocopies of Goston County registration records of which the originals are maintained in the registration office shall be admissible in evidence in the place of originals, as though they were original records. The parties stipulate as to the authenticity of such copies as either party may seek to introduce.

8. Defendant will seek to introduce into evidence certain photographic copies of articles in the Charlotte Observer regarding voter registration in Gaston County. The parties stipulate that these photocopies are authentic and that they were in fact published in the issues of the Charlotte Observer of May 10 and 11, 1962.

9. Defendant will seek to introduce into evidence certain photographic copies of excerpts from various Bienniel Reports of the Superintendent of Public Instruction of North Carolina. The parties stipulate that these copies are authentic copies of extracts from such Reports and that these are matters of public record in the possession of the United States Department of Health, Education and Welfare.

10. Each party agrees that the article from the Charlotte Observer of May 10, 1962, headlined "4,998 New Names

on Voter List" may be admitted in evidence. Plaintiff expressly reserves its objections to the admissibility of other materials described in paragraphs 8 and 9 of this Stipulation, on the grounds of lack of relevancy, competency and materiality.

11. The average circulation of *The Charlotte Observer* in Gaston County in the year 1962 was 14,093 daily and 16,532 Sunday. The circulation of *The Charlotte Observer* among Negroes and white people in Gaston County is unknown.

12. A map showing the voting precincts of Gaston County, North Carolina, and a list showing the numbers and names of these precincts, together with the names and dates of service of each of the registrars who has served since August 11, 1961, are attached hereto and may become a part of the record in this matter without further proof.

13. With the exception of Mrs. Elsie Sanders, all of the persons who have served as regular voter registrars in Gaston County, North Carolina since August 11, 1961, are white persons.

14. The Gaston County Board of Elections has no records of written literacy test forms of persons who were rejected, if such persons were rejected, for registration on the basis of their failure to complete satisfactorily the written literacy test.

15. The government finds no evidence that during the five years preceding the institution of this suit that any registrar of voters in Gaston County or any member of the Board of Election of Gaston County advised any Negro citizen that he or she would be refused registration because of his or her race.

/s/ Grady B. Stott
Attorney for Plaintiff

/s/ Monica Gallagher
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

TRANSCRIPT OF PROCEEDINGS

Monday, June 19, 1967

The above-entitled cause came on for hearing before THE HONORABLE J. SKELLY WRIGHT, United States Court of Appeals, Presiding, THE HONORABLE SPOTTSWOOD W. ROBINSON, III, United States Court of Appeals, and THE HONORABLE OLIVER GASCH, United States District Court, at ten a.m.

* * * * *

TESTIMONY OF WILLIAM MACK DAVIS

DIRECT EXAMINATION

[12] BY MR. STOTT:

Q. Would you state your full name, please? A. My name is William Mack Davis.

Q. Where do you live, Mr. Daivs? A. I live at 3032 Imperial Drive, Gastonia, North Carolina.

Q. How long have you lived in Gaston County? [13] A About forty years.

Q. Are you presently employed in Gaston County? A. Yes, I am.

Q. What, sir, is your line of work? A. I am accountant, auditor with Gaston County.

Q. How long have you been employed in that capacity by Gaston County? A. About twenty-five years.

Q. Have you had occasion in the past to act as the Chairman of the Gaston County Board of Elections? A. Yes, I have.

Q. When were you first appointed to this position? A. I was appointed the latter part of August, 1960, to serve out the unexpired term of the former Chairman, Hugh Johnson, and then I was subsequently appointed for a full term of two years.

Q. When did you leave that position? A. That was in March of '64.

Q. Did you leave by resignation? A. That is correct.

Q. You are familiar then, are you not, with the method of appointing Registrars in the conduct of elections in Gaston County? [14] A. Yes, I am.

Q. Would you tell us the number of incorporated towns that we have in the County of Gaston. A. It seems like we have roughly eleven, I believe. We might have a few more than that now but I think at that time we had about eleven.

Q. Are you familiar with the newspapers that are published in the County? A. Yes, I am.

Q. Would you state for the record what newspapers are published in Gaston County? A. The Gastonia Daily Gazette is published in Gastonia. The Belmont Banner is published in Belmont. The Cherryville Eagle in Cherryville. I believe that is all.

Q. Did you mention the Bessemer City newspaper? A. I believe that is the Record.

Q. The Bessemer City Record? A. Yes.

Q. All right, sir. Now while you were serving as Registrar in 1962, Mr. Davis, or prior to 1962, do you know what type of registration system was in use in Gaston County? [15] A. Yes, I do.

Q. Would you explain the type of registration system that was in use in Gaston County prior to 1962? A. The system that was in use when I came on the Board was a bound-type system. This was a book with an alphabet with the pages sewn in. I don't—it is my understanding that at about 1940 the books were not purged but they were rewritten into these bound records. Of course, then registration from 1940 up to the time 1960, each was indexed in the proper index, although that they were not in numerical order under each letter of the alphabet.

Q. Prior to April 1962 do you know what period of time during the year that a person was permitted to register to vote in Gaston County? A. Yes, I do.

Q. Would you state that to the Court? A. They were allowed to register on three Saturdays prior to challenge

day, and the challenge day was one Saturday before the election day. The Registrars were to keep the books open at their homes and if anyone at that time—they could register with the Registrars if they could find them.

[16] Q. Was that prior to 1962? A. That is correct.

Q. At that time, prior to 1962, did the Gaston County Board of Elections maintain an office, a central office in the County Seat where people could register at any time of the day during the week? A. No.

Q. Then after—strike that, please. Do you know whether or not the registration books in Gaston County up until April 1962 had been purged or any type of new registration system invoked in Gaston County? A. Not to my knowledge.

Q. To your knowledge, Mr. Davis, would you say that the books, the registration books, prior to April 1962 had been used for 100 years or maybe more? A. Well, it was a long time. I don't know. It is my understanding and belief that they were recopied in 1940 and prior to that I don't know how old they were.

Q. Now, in 1962 did Gaston County adopt a new system of registration? A. That is correct.

Q. What was the effective date or when did that registration start in 1962? A. It started on April 21, 1962.

[17] Q. Now, prior to April 21, 1962, were any steps taken to get the system in order and if so, would you state to us briefly what steps were taken? A. Yes, we purchased the proper books, forms, equipment. Under the old system we had 35 voting precincts with some precincts having as many as 4,500 people registered in one precinct, which was in our opinion entirely too many to try to vote on any one day, so the Gaston County Board of Elections changed it from 35 voting precincts into 44 voting precincts in the County. We—

Q. And you—go ahead, excuse me. A. We used the majority of the 35 Registrars that were experienced registrars and we screened and talked with people and appointed the remaining Registrars to handle the new permanent-type registration.

Q. Would you explain to us, Mr. Davis, how or the procedures used to select Registrars? A. We, as I said, we screened the Registrars and we talked with them and we got people that we thought were competent people that would register any and everyone that was eligible and would administer the law as fairly as they knew how.

[18] Q. Were any Deputy Registrars appointed, that is, people to register our citizens in addition to the regular Registrars? A. At the primary time there were not, but at the general election—

Q. Now, the primary time, what primary time are you talking about? A. I am talking about—this was a new registration for the primary of 1962.

Q. That would be May 1962? A. That's right, yes.

Q. All right. A. For the April 21 registration.

Q. Now when this new system of registration was installed in the County, could you explain for the record and for the Court the type of system that we install for use in Gaston County? A. The system that we are using is modeled after—I believe we were either the sixth or seventh county of the 100 counties in North Carolina to install this system. It is commonly known as the McMillan System. It is a loose-leaf system in which upon registration two cards are prepared. [19] One is prepared for the actual precinct voting books and the original card is prepared for a county-wide alphabetical file. These cards are in loose-leaf form so that they can be shifted as to where that they will be in complete alphabetical sequence at all times.

Q. Can you tell us some of the advantages of this new modern loose-leaf system that Gaston County invoked in 1962 as opposed to the system which was used prior to that time? A. Yes, particularly in that in the old system all names were listed in one book with the alphabet and the current books that we have, we try to run them a maximum of five to six hundred to a book for an alphabet.

Under the old system it deterred voting for the fact that everyone had to go through one book where now we can be spread out for three, four, or five books, according to how many that we have registered.

It also keeps down double registrations. In the event of transfer from one precinct to another their names are deleted from the precinct that they are transferring out of and transferred into a new precinct, so you don't get double registration.

[20] It also gives—with the alphabetical county-wide listing, why we get a check as to double listings.

Q. All right. Now, Mr. Davis, when this was adopted by the County of Gaston, was it done by order of statute or was it a permissive thing that the county could elect to do if it decided to do so? A. This is permissive. It was not statute. It was not required by the statute.

Q. Do you have—well, strike that, please. Now, the Board of Elections in Gaston County, how is it composed? A. The Board of Elections in Gaston County is composed of three members. The executive committees of the two major parties make recommendations to the State Board of Elections for appointments. The State Board of Elections makes the appointments of the three members and of the three members, then a chairman is selected from the three members.

Q. What elections in the County did the Gaston County Board of Elections have control over? A. We have had control over all Federal, State, County and Township elections. We have no control over any municipal [21] elections in Gaston County.

Q. Now, Mr. Davis, in 1962 and prior to April, in particular, 1962, what steps were taken by the County Board of Elections in Gaston County in regard to getting people registered under this new system of registration? A. Well, to begin with, we had schools for our Registrars, to instruct them as to the proper procedures, so that we would have uniform registration in all 44 of the precincts. The news media gave us extensive coverage by editorials and news reports about the registration. We also purchased advertising on three radio stations in the County, spot announcements. I believe it was 100 spot announcements in one station and 134 on another.

Q. Could I stop you there? A. Yes.

Q. Do you have the dates that these 100 announcements were made or applied for and made, and what radio station they were made through? A. Through Radio Station WGNC. The invoice that we have is May the 23rd, 1962. This was after the primary. This was for 100 spot announcements at $1 each.

Q. Now would you tell us the name of the other station and the date that the announcements were made and paid for by [22] the County of Gaston? A. On Radio Station WCGC, with an invoice of May the 31st, 1962. We had 135 spot announcements at a price of $100.

Q. I want to go back to a point, Mr. Davis, and I would like for you to state the period of time that a person is permitted to register under the new system and what time is made available to a citizen of Gaston County to register under the new system which started beginning in April 1962? A. Under the new system an individual can register with any Registrar, any of the 44 Registrars in the County, at any time that they can make contact with the Registrar. They may also register at a central election office on South Street in Gastonia at any time between eight o'clock in the morning and five o'clock in the afternoon, and I believe the office is open a half day on Saturdays. Now this is permissive except for 21 days prior to any election. Our state law requires us to close registration 21 days prior to any election.

Q. But except for the 21 days then, a person is permitted to register any time during the year either through the Registrar of the precinct, or at the central office of the County Board of Elections in Gastonia? [23] A. That is correct.

Q. Back to the question I had asked you in regard to what steps were taken by you as Chairman of the County Board of Elections in order to get people registered under the new system of registration. A. Of course, after these spot announcements and all, we ran advertisements in every newspaper in the County, showing the precinct maps. They were numbered. We ran paid advertisements listing all of

the names of the Registrars, the precinct number, the home address of the Registrars, and their telephone numbers. Now there were in paid advertisements in the newspapers. Also—

Q. Can you give use the dates now, as near as you can or as near as you recall, when these advertisements, or some of these advertisements were published in the newspapers? A. I have one here for the Gastonia Gazette on April 20, 1962, for 198 inches of advertising at $1.25 an inch, for $247.50. One on April the 27th, 1962, advertising, 198 inches in color, red. This was the boundary lines that were over-laid in red over the township or the precinct lines, for $252.50. [24] Then on May the 2nd, a listing of the voting places—the places for registering in Gaston County on May the 2nd, for $25; May the 3rd, $25, and May the 4th $25.

Q. Now these that you refer to now, Mr. Davis, were published in May, prior to the May primary of 1962? A. That is correct.

Q. The new system started on April 21, 1962, is that correct? A. That is correct.

Q. From the date of April 21, 1962 until the primary of May 28, 1962 do you know many people had registered in Gaston Country under the new system? A. Yes. The State Board of Elections and the Attorney General's office held us to the two weeks' registration period. That is not true now, but they held us to that at that time. In the two weeks' period, we put on 30,000 and 12 or 77—just one minute—it would be slightly in excess of 30,000 in the two weeks' period.

Q. In the two weeks' period from April 21, 1962 until May '62? A. Until the last day of the registration we put on 30,077, I believe was the figure, approximately that.

[25] Q. Now, did you, as Chairman of the Board of Elections, take any other steps to insure the citizens of Gaston County that information regarding new registration would be given or that people would have to re-register under the new system? A. At the primary time I did not.

We used radio, newspapers and worked with civic groups and other groups in order to get registration.

Q. Now, you did testify, I believe, Mr. Davis, that you appointed some Deputy Registrars, did you not? A. That is true.

Q. To assist in registration. A. That was not at primary time.

Q. When was that? A. This was prior to the general election.

Q. In 1964? A. That is correct, 1964.

Q. How many Deputy Registrars were appointed after the primary but before the general election? A. We appointed five.

Q. Do you know when these Deputy Registrars were appointed, how long before the general election in November of '64? A. It was in October, either late September or early [26] October.

Q. Now were any of these Deputy Registrars Negroes? A. Yes.

Q. How many? A. Three.

Q. Well, prior to that time were any of the regular Registrars Negroes in Gaston County? A. No.

Q. What steps other than those which you have described were taken by you prior to the general election to get people registered to vote in Gaston County? A. Well, prior to the general election, the Election Board sent out a letter addressed to the parents of all Gaston County school children. About 31,500 of these were distributed to all of the schools in Gaston County and the principals and the teachers of these schools distributed these to the students in the school to take home to their parents.

Q. Did you personally write the letters that you now refer to? A. Yes, I did.

Q. How many did you send? A. We sent out approximately 31,500.

Q. Were these distributed to all schools in Gaston [27] County? A. Every school in Gaston County, yes.

Q. In addition to that, Mr. Davis, did you have any contact with any of the Negro leaders of our community, of our County? A. Yes, I did.

Q. Would you state to the Court who some of these men and women were? A. I met with Mr. Barber, Mr. Nathaniel Barber, Mr. Floyd, Mr. Honeycutt. I don't recall all the other names at this time but we had a dinner meeting over at Ervin Park Recreation Center.

Q. All right. Now this was personal contact that you had with these Negro leaders? A. Yes, sir.

Q. Can you tell us what steps, after your conference with them were taken by the Negro leaders to assist in getting the people of our County registered? A. They were all willing to lend any assistance that they could. The women's sorority group or auxiliary group elected to have a meeting. They sent out hand bills for this meeting and we sent Registrars into this meeting to [28] register anyone that was eligible to register.

Q. In 1962, while you acted as Registrar, until you resigned in 1964, what type of test, if any, was being administered in Gaston County? A. A card was used—

Q. Was it a written or oral test? A. It was an oral test.

Q. Was that an oral test to read any portion of the Constitution, read and write any portion of the Constitution of North Carolina? Is that what the test was? A. Yes. May I say this?

Q. Yes. A. That the registration that we used or the test we used was a card with fairly good print on it so that the elderly, if they had trouble, could read it, and it was not a direct quote from the Constitution of the United States, but a paraphrase, and lots of language was the same as the Constitution. If anyone failed to read that then they were presented with the Constitution, to read it. This was in order to expedite registration.

Q. Now, Mr. Davis, under the statute the Registrar had the duty to administer the test, is that correct? [29] A. That is correct.

Q. Now, do you know how many people were registered prior to the general election, that is, registered to vote, prior to the general election in Gaston County in 1964? A. I have the figures. Just on minute.

Q. If you have those figures, Mr. Davis? A. It is about 47,000 roughly.

Q. Now prior to 1962 when you became Chairman, do you know or do you have an opinion how many people were on the registration books in Gaston County? A. That is hard to tell prior to—

Q. Could you give us your best estimate as to the number that we had on the books eligible to vote prior to April 21, 1962? A. This would be entirely a guess, probably somewhere 55—I mean probably 50,000 to 55,000. We had guesses going all the way as high as 70, but I don't think that that was anywhere near it.

Q. Nothing had been done with the registration to your knowledge since 1940? A. That is correct.

Q. Were any steps taken to have the Registrars to go into certain areas in the County for the purpose of registering [30] a citizen? A. Yes.

Q. What were they? A. What?

Q. What steps were taken? A. At first, when we were registering, we elected to keep the Registrars in the voting precincts on certain days. We found that on certain days that—of course, they were required to be there on the three Saturdays, but other—

Q. On the three Saturdays, let's state what three Saturdays you are referring to. A. This is the three Saturdays required by statute under the law that we were operating under then, which were the three Saturdays just prior to challenge date, that they were required to be there. But we advertised that we would have them in the polling places on times other than Saturdays, so in some precincts registration was dropped off, so we elected to have the Registrars to go at their discretion as to wherever that they thought that they could register people.

Q. Was that just in certain precincts or in all precincts? [31] A. This was in all precincts. They were also paid a fee for each name that they registered on any day that they were not required to be in the precinct.

Q. When you use the word "they" who— A. The Registrars.

Q. Pardon? Whom do you mean? A. They, the Registrars were paid a fee for each name that they registered on the days that they were not required to be in the precinct.

Q. What was the purpose, Mr. Davis, for you, as Chairman, to authorize the payment to a Registrar for each name that was put on the books? Why did you do that? A. We thought that it would be more convenient for them to visit industrial establishments, mills, and places where people worked in order to get as many names registered as we possibly could. This was a little incentive for the Registrar to get out and work.

Q. Now, was this done throughout 1962 or just before the primary or before the primary and before the general election in '62? [32] A. Well, the majority of it was prior to the primary of '62. However, at any time between the primary of '62 and the general election of '62, why they could register and receive remuneration for each name that they registered.

Q. You mean a Registrar could and would receive pay? A. That's right.

Q. While you acted as the Chairman of the Board of Elections of Gaston County, did you ever at any time receive any complaints from any person about his inability to register for any reason, particularly, a literacy test, or because of race or color? A. No. There was never a complaint registered either officially or unofficially with our Board.

Q. Do you know, Mr. Davis, how many people voted in Gaston County in 1960, in the general election in 1960? A. In the general election in 1960, yes, sir. I handled that and that was my first one. There were 41,354 that voted in the general election of 1960.

Q. All right. Do you know how many voted in the general election of 1964 after the new registration was in effect? [33] A. Yes.

Q. How many? A. There were 37,326 voted in the November of 1964 general election.

Q. And— A. Roughly ninety and one-fourth percent of the 41,354.

Q. That had voted in 1960? A. That is correct.

* * * * *

CROSS-EXAMINATION

BY MR. SCHWELB:

Q. Now, Mr. Davis, you are employed by Gaston County at the present time, are you? A. That is correct, sir.

Q. You were employed by Gaston County at the time when this total re-registration of voters took place? A. Yes.

Q. In 1962. Now at the time of that total re-registration, sir, is it true or not that—well, you testified you didn't get [34] any specific complaints made to you. A. Yes.

Q. Now, you were aware of some complaints being made with respect to people not being able to pass the literacy test, were you not? A. I read an article or two in the newspaper about it, was all.

Q. Well, when you read the article in the newspaper, that was after talking to the person who wrote the article, wasn't it? A. No.

Q. You didn't talk to any person in the— A. This article was written by Claudia Howe, I believe,

* * * * *

Q. Whom does she work for, Mr. Davis? A. The Charlotte Observer, if it is the one I have in mind.

Q. Did she talk to you at any time? A. Yes, I talked with all the reporters.

Q. Didn't you become aware of the fact, Mr. Davis, that people, and white people, were complaining that they had been voting all their lives and they weren't able to pass the literacy test at this time? [35] A. I had only one to call me about it.

Q. Who was that? A. He didn't identify himself.

Q. But did he tell you that he had been voting all his life? A. Yes, he did.

Q. Now, it was your official position at this time that the re-registration was to be conducted in terms of North Carolina law, is that not right? A. That is correct.

Q. And North Carolina law, the letter and spirit of the law? A. Yes, sir.

Q. Now, this purpose of yours, that it be applied in accordance with North Carolina law, received publicity in the press, didn't it? A. Yes, it did.

MR. STOTT: Objection.

JUDGE WRIGHT: It is overruled.

MR. SCHWELB: I would like to introduce into evidence at this point, may it please the Court, four articles previously marked in identification as Defendant's Exhibits 3, 4, 5 and 6, from the Charlotte Observer.

[36] MR. STOTT: We object to the introduction of—

JUDGE WRIGHT: Wait just a moment. We are going to proceed as indicated. You can use the exhibits and your ojbection will be preserved. It will be in writing and will be supported by memorandum.

MR. SCHWELB: May I approach the witness, Your Honor, to show him these?

JUDGE WRIGHT: Yes.

BY MR. SCHWELB:

Q. I would like to show you, please Government's Exhibit for identification, No. 5, which is from the Charlotte Observer of May 10, 1962, and ask you if you believe you have ever seen that before? A. (Examining.) Yes, I have read that.

Q. That attributes certain statements to you. Were those in accordance with your general feelings at that time? A. I didn't read the whole article, but I—

Q. Take your time. A. I remember some of this (Examining.)

Q. Well, let me ask you this. A. I recall—I do recall stating that we had no alternative but to comply with state law.

[37] Q. It was your intention to comply with state law, is that right? A. That is correct.

Q. You feel you did comply with state law in letter and in spirit? A. Yes, sir.

Q. Now you are here quoted as saying that, "I know it is hard on an old person who has always voted to suddenly be told that he will not be able to register because he is unable to read and write." Do you recall specifically saying that? A. No, sir.

Q. But you could easily have said it, couldn't you? A. I don't know.

Q. I mean, that was your feeling, wasn't it? A. Well, it was our feeling that no one—it was hard to disenfranchise anyone from voting. That is the reason we made such an effort to get everyone registered.

Q. Well, you were aware, weren't you, Mr. Davis, that large numbers or considerable numbers of illiterate white people had been registered previously? A. No, I wasn't.

Q. Well, you knew some had, didn't you? [38] A. I feel probably some had, but not large numbers.

Q. You didn't know the extent of it, did you? A. No.

Q. It was the stated intention of the Gaston County Board of Elections to discontinue registering illiterate people, wasn't it? A. I don't know that—about using the words "to discontinue."

Q. Well— A. Registering.

Q. Apart from who may or may not have been registered in the past, it wasn't your intention to register any more illiterates, was it? A. Well, we would conform to the state law.

Q. In all respects? A. Yes.

Q. As far as you know. Now let me ask you whether you recall reading Defendant's Exhibit for identification No. 3, entitled "They Can't Read so They Can't Vote Any More," which refers to a man called Chalres Clark, among others? A. Yes, this is the one I made reference to a while ago about the Charlotte Observer by Claudia Howe.

[39] Q. Do you know Charles Clark, Mr. Davis? A. No, I don't.

Q. But you recall reading that article? A. I saw it, yes.

Q. You became aware, assuming the truth of that article, that Charles Clark had been truned down for registration?

MR. STOTT: Ojbection to the form of the question?

JUDGE WRIGHT: Overruled.

THE WITNESS: As far as I know—I don't recall right now—I don't know whether he presented himself for registration or not.

BY MR. SCHWELB:

Q. But it certainly would have been in accordance with the policy of your Board, of your stated policy, to reject him if he couldn't read and write? A. If he was completely illiterate, yes.

Q. What do you mean by completely illiterate? A. Well, I don't know as to the degree. This was something that the Registrar had to satisfy themselves with. Of course, I don't know. I didn't talk with Mr. Clark.

Q. That was left entirely to the discretion of the Registrar, what was illiterate and what wasn't, what constituted ability to read and write and what didn't, is that true? [40] A. That is true. It wasn't—our Board couldn't be everywhere and test everyone when we put on 30,000 in two weeks and I did not, as I said before, I didn't talk with Mr. Clark. He never contacted me and as far as I know he never contacted any member of the Board.

Q. Well, this discretion that you have described with respect to what constituted illiteracy, that was exercised at that time by Registrars all of whom were white, was it not? A. At that time, yes, sir.

Q. Since that time there has been one Negro— A. I don't recall—I don't know the date of this.

Q. 1962, the early part of the re-registration, May 1962. A. This was primary, yes.

Q. Now, let me ask you this, Mr. Davis. Did you have any legal advice at the time when you were instructing Registrars how to apply this literacy test? A. Yes.

Q. Did you have any specific idea what the law of North Carolina was with respect to what literacy was required? A. Yes.

Q. What was the law of North Carolina with respect to people who could, say, write their name and read a few words? [41] Were they literate or illiterate? A. The law stated that any person presenting himself for registration must be able to read and write any section of the state constitution. There is also a ruling that they must—that they do not have to pronounce every word correctly or they do not have to spell every word correctly, that they must not be required to write from dictation and that any lengthy test should not be given.

Q. When you are talking about that ruling are you referring to the ruling of the Supreme Court of North Carolina in Bazemore against Berti County, if you know? A. I don't know the particular case.

Q. But it was a ruling by the Supreme Court of North Carolina? A. Yes.

Q. You considered yourself bound by that Supreme Court ruling of North Carolina, did you not? A. That is correct.

MR. STOTT: Objection to that.

JUDGE WRIGHT: Overruled.

BY MR. SCHWELB:

Q. Now do you happen to know who the judge was who wrote that ruling?

[42] MR. STOTT: Object to that.

JUDGE WRIGHT: I sustain the objection.

* * * * *

Q. Mr. Davis, I would like to show you Volume 254 of the North Carolina Reports, which contains the Supreme Court of North Caolina decisions, which contains the opinion in the case of Bazemore v. Board of Elections.

I would like you to read, please, for me the indicated passage where I have got my finger, until the ink mark.

MR. STOTT: Objection.

* * * * *

[43] JUDGE WRIGHT: I sustain the objection.

* * * * *

Q. Did you take the position at the time when the people were re-registering in 1962 that it was sufficient if they could write their name and read a few words? A. Not merely a few words.

Q. Read short words without reading long words? A. As long as they could read sufficiently to satisfy the Registrars that they were literate in order to be able to understand what they were reading.

[44] Q. You gave no specific determination to any of the Registrars as to whether short words or long words were required? A. No. We instructed them that occasional mispronunciations or spelling of words was, in our opinion, no reason to reject anyone from registration.

Q. Well, if any Registrar followed a practice in which he registered anybody who made any attempt to read, he was going against your instructions, is that true? A. I beg your pardon?

Q. If any Registrar accepted anybody who made any attempt to read, could sign his name and read one or two little words—if he accepted such a person he was going against your instructions, is that true? A. Not if it fulfilled the requirements, if the Registrar was of the opinion that they were literate enough to register. I don't know how you would classify the degree of literacy as to where we would cut off, but if it was evident to the Registrar that they could read and write nothing, why then, of course, there was no alternative.

Q. Now you say it is difficult to define what constituted literacy and it was difficult to define at that time, [45] I suppose, for you? A. Yes, as to the degree of literacy.

Q. It hasn't gotten any easier since the time that you instructed these Registrars? A. I don't know. I am not on the Board now, sir.

Q. All right. Now, do you have any knowledge personally as to whether any persons who don't meet a literacy standard such as that described by the Supreme Court of North Carolina and by the law of North Carolina actually registered in Gaston County? A. Not to my knowledge.

Q. You don't know of any? A. No, I don't.

Q. I suppose you don't know, do you, that this Charles Clark was registered several months after this newspaper article with the assistance of the sheriff, or at least that he so testified? A. I wasn't aware of that.

Q. You haven't read the testimony in this case? A. No, I haven't.

Q. During your incumbency as the Chairman of the Board of Elections was it your instructions that the Registrars [46] give only oral tests? A. We gave oral tests mainly to expedite registration. We knew that if we—we already had lines formed in order to—for us to register as many people as possible. We used the oath of registration as a test for literacy and, as I said before, this oath paraphrases and sometimes uses exactly the same wording of the constitution, and then when they—they, of course, had to sign the cards.

Q. Well, your instructions to registrars were that they don't have to give a writing test, is that true? A. That was true. If they were able to read the oath of registration, why, we did not give writing tests as such other than for the signing of the names.

Q. Do you know that some of the Registrars did give a writing test as well to some people? A. Not to my knowledge. I had never heard that.

Q. Had you forbidden them to do that? A. No, I hadn't.

Q. That was left to their discretion also? A. But I didn't know, because we had classes before the registration was started and for two nights at the courthouse in Gastonia, in order to instruct the 44 Registrars so [47] that we would have uniformity throughout the registration and this was agreed upon by the Board.

Q. Now, did you know that the North Carolina law authorized the Registrars to exempt certain people from the literacy tests? A. No.

JUDGE ROBINSON: I did not hear that. I am sorry.

THE WITNESS: I said, no, sir.

BY MR. SCHWELB:

Q. Do you know whether the Registrars did exempt certain people in accordance with North Carolina law? A. I don't know that this—are you referring to the grandfather clause?

Q. Well, let's see if you know—let's take the grandfather clause. Did they exempt people under the grandfather clause? A. No—

* * * * *

[48] JUDGE WRIGHT: Do you know of any Registrar who registered voters under the grandfathe. clause without the literacy test?

THE WITNESS: No, sir. No, Your Honor.

JUDGE WRIGHT: All right.

BY MR. SCHWELB:

[49] Q. Do you know whether or not they exempted any person from taking the literacy test other than under the grandfather clause? A. I know of no one.

Q. You don't know that they didn't do it, do you? A. No, I don't.

Q. Do you recall discussing that specific problem with any of the Registrars? A. No, because I know of no reason for anyone to be exempt from the literacy test.

Q. You didn't realize that was permitted under North Carolina law? A. No.

Q. You still don't realize it? A. No, I don't.

Q. Now, do you know how many people were rejected for registration under your stewardship in the Gaston County Board of Elections? A. No, I don't.

Q. You don't know at all of your own knowledge, do you? A. No, I don't.

Q. What you do know about it is— A. I know it was very few.

[50] Q. Well, you know that from what somebody else told you, don't you? A. That is correct.

Q. You don't know of your own knowledge— A. From what the Registrars had to say.

Q. Well, other than hearsay evidence you don't have any personal knowledge, do you? A. No, because I didn't re-

ject anyone and we had no appeals to our Board, so we didn't reject anyone.

Q. Now, as far as you know was any record kept of rejected applicants? A. Not to my knowledge.

Q. Were you aware of the record retention provisions of the Civil Rights Act of 1960? A. No, we were not.

Q. You didn't know about that? A. No, I didn't.

Q. You didn't know for example that Frank Miller had been rejected, did you, in Cherryville? A. No, I didn't.

Q. You didn't know that Thornton Stringfellow had been rejected?

* * * * *

[51] MR. STOTT: Your Honors, I object to that question. * * * * *

JUDGE WRIGHT: Do you know whether he was rejected?

THE WITNESS: I do not, Your Honor.

JUDGE WRIGHT: All right.

THE WITNESS: I have no knowledge of it.

BY MR. SCHWELB:

Q. Do you know whether Mrs. Burch was rejected? A. No, I don't know.

Q. Do you know whether Mrs. Hyde was rejected? A. I have no knowledge of it.

Q. So that it is perfectly possible that a number of people might have been rejected of whom you have no knowledge? A. That is true but it is my understanding that there were not very many that were rejected.

Q. That is your understanding on the basis of hearsay, isn't it? A. My conversation with the Registrars that would be the ones that were—

[52] Q. Now I am— A. —making rejections.

MR. SCHWELB: I move to strike the information that he is testifying to on the basis of what somebody else tells him.

* * * * *

[JUDGE WRIGHT] I will overrule the objection at this time. You may proceed.

BY MR. SCHWELB:

Q. Now, with respect to the people who may have been rejected—

JUDGE WRIGHT: Wait just a minute. You motion was to strike.

MR. SCHWELB: To strike the answers which rest on hearsay.

JUDGE WRIGHT: I deny the motion.

BY MR. SCHWELB:

Q. Now, there is no way that you know of, without any record of the people who were rejected, of comparing their [53] literacy with other people who have been accepted? A. No, I don't. I don't have any knowledge of it.

Q. Now you mentioned that some Negro Deputy Registrars were appointed at one time in Gastonia. A. That is correct.

Q. When were they appointed, did you say? A. Either September or October of 1964. Just a minute. That is correct. It was before the general election of 1964.

Q. Now, let me ask you this, sir. Were you interviewed by the FBI in connection with this case? A. Yes, I was.

Q. And you discussed that question with the FBI also, did you not, the appointment of those Negro Deputy Registrars? A. I presume I did. I don't recall our exact conversation.

Q. Do you recall telling the FBI that you had some thought that perhaps Negroes might not—low literacy Negroes or other Negroes—strike that, please and I will start again. Do you recall mentioning that low literacy Negroes or other Negroes might be hesitant to register before white Registrars? A. Yes, I think I said that.

[54] Q. That is true, isn't it? A. Yes, sir.

Q. That is the reason that you appointed those three Negro Deputies? A. That is one of the reasons for it. We wanted to expedite registration and to help in any way we could and we wanted some people to go into the areas to register these people.

Q. These people went to three areas of Gastonia, didn't they, or three precincts in Gastonia? A. At least.

Q. And they were registering people in predominately Negro areas of Gastonia. That was their purpose, was it not? A. Well, they could register anyone, but it was predominately Negro areas that they registered.

Q. Now, of course, this situation that you described, that Negroes—borderline literacy or even other Negroes might be hesitatnt to go to white Registrars, those areas of Gastonia are not the only places where that is true, are they? A. I am sorry. I didn't quite follow you.

Q. Well, the reason—the condition of Negro hesitancy which you testified went into your thinking, that is not true only in those three areas of Gastonia, is it? [55] A. You mean as to the Negro population?

Q. What I mean is the Negro state of mind which led you to appoint those three Negro Deputies—

MR. STOTT: Object. I object to the state of mind, the form of the question, please.

JUDGE WRIGHT: Why did you limit your appointment of Negro Registrars to these particular precincts?

THE WITNESS: Well, they are not limited to these particular precincts. The Registration Commissioners could register in any precincts in the county.

JUDGE WRIGHT: How many Commissioners were there?

THE WITNESS: We had five Registration Commissioners.

JUDGE WRIGHT: You mean a total of five for the whole county?

THE WITNESS: No, these were Registration Commissioners besides the 44 regular Registrars.

JUDGE WRIGHT: These Negroes were what, Commissioners or Registrars?

THE WITNESS: They were Commissioners, Your Honor.

JUDGE WRIGHT: You mean three of the five Commissioners in the county were Negro?

THE WITNESS: Yes.

[56] JUDGE WRIGHT: You say they could register anywhere in the county?

THE WITNESS: Yes, sir, they could register anywhere in the county.

BY MR. SCHWELB:

Q. How long were they acting, sir? A. For—I don't have the actual appointment but I know that most of the registrations that these put on were—were some two to three weeks prior to the general election of 1964.

Q. That is when those three Negro Commissioners were in office and were registering people, is that right? A. That is correct.

Q. And, of course, during that same time all the white Registrars in the county were also acting? A. That is correct.

Q. And the white Commissioners that you referred to also? A. That is correct.

Q. And other than the appointment of those three Commissioners for those two or three weeks, all the registration was done by white people, wasn't it? A. Yes.

Q. Now, returning to what I was driving at before, you [57] testified earlier that you thought some Negroes might have hesitancy in front of white Registrars. A. I think that was the discussion I had with the FBI agent.

Q. Now, there is nothing particular about those two or three weeks that single those two or three weeks out or that area out from other times or other places in Gaston County, is that true? A. I know of nothing that would single it out. It was just an effort to simplify registration.

* * * * *

THE WITNESS: Make it more convenient.

JUDGE WRIGHT: Make it more convenient, is that what you last said.

* * * * *

BY MR. SCHWELB:

Q. Were you brought up in Gaston County? A. Yes.

Q. You went to school there, did you? A. Yes, I did.

Q. What was the race of the teachers at your school? A. The race of the teachers in the school?

[58] Q. Yes. A. They were white.

Q. What was the race of the pupils? A. White.

Q. During the lives of the—during the childhood of the persons who are now voting and eligible to vote in Gaston

County, as far as age is concerned, during their lives their schools were completely segregated, was that not true? A. I presume that is true, yes, sir.

Q. And the churches and social clubs and organizations by and large, are all white or all Negro, are they not?

MR. STOTT: Your Honors, I object to this line of questioning.

JUDGE WRIGHT: What is the purpose of the question?

MR. SCHWELB: Your Honor, one of our principal defenses in this case is that a considerable degree of discretion was given Registrars in Gaston County and that this took place in a racially segregated setting and that the effect of such discretion in a racially segregated setting operates inherently against the Negro. That is a critical part of our defense as I think the Court is aware from our pretrial statement. I think that we should be given the right to develop [59] that. There are a number of cases that have—

JUDGE WRIGHT: We will take the testimony subject to your objection. You may further your objection in post trial briefs.

BY MR. SCHWELB:

Q. Well, did you understand the question earlier, that generally social life is segregated in Gaston County, is it not? A. That is correct.

Q. The Registrars also went to school with other white people, did they not? A. I presume that is—

Q. And they would know— A. —correct. I don't know.

* * * * *

[60] Q. The Registrars, the white Registrars, let's say, in Gaston County, those that were educated in Gaston County went to school with white children and were taught by white teachers, were they not?

JUDGE WRIGHT: Well, haven't we already established that the education in Gaston County was segregated—

MR. SCHWELB: Well—

JUDGE WRIGHT: —and that applies to the Registrars as well.

MR. SCHWELB: All right. I am sorry, Your Honor. I was repetitive and I will try to avoid that.

BY MR. SCHWELB:

Q. Now, the Registrars are given discretion to register people at home, aren't they? A. Yes, they are.

Q. Some Registrars do and others don't? A. That is true.

Q. It is certainly more usual in a social context for a white Registrar to have a white man at his home than a Negro at his home, is that not true? [61] A. I believe that that would be true, yes, sir.

Q. Now, let me ask you something about Gaston County generally. You testified that there were, I think, eleven municipalities in Gaston County. A. At least eleven. We have some very small ones.

Q. Did your general re-registration apply to those? A. The general re-registration apply—

Q. In 1962, yes, sir. A. To the municipal books?

Q. Yes, sir. A. No, sir. We have nothing whatsoever to do with municipal elections.

Q. You don't have any personal knowledge at all of the practices of the municipal Registrars, do you? A. I do not.

Q. You don't know whether they have been subject to the Voting Rights Act or not, or have been complying with it? A. No, sir.

Q. All right. Now, these municipalities other than Gastonia, are in the rather more rural parts of the county, in Gaston County [62] aren't they?

JUDGE WRIGHT: Counsel, will you state the purpose of the interrogation with reference to the municipal Registrars?

MR. SCHWELB: Yes, Your Honor. There are several purposes. First of all, Your Honor, the municipalities within Gaston County would be relieved from the effect of the Voting Rights Act if Gaston County comes out. And I think we are going to be able to show that they don't have any proof with respect to the municipalities. Secondly, I want to show that an awful lot of the plaintiff's proof in this case apparently refers to the City of Gastonia. I want to explore a line of questioning which will show differences in conditions between the City of Gastonia and the County.

JUDGE WRIGHT: All right, sir. There has been no objection, so we will proceed right ahead.

BY MR. SCHWELB:

Q. Well, let me ask you about the city and county. I believe there have been Negro Councilmen or one Negro Councilman at a time in Gastonia, is that not true? [63]

A. That is correct.

Q. Do you know of any Negroes who have been elected to office in rural Gaston County? A. I don't recall. I do know that we have had Negro Councilmen. In fact one Negro served as Treasurer of Gaston County for years. I mean for the City of Gastonia, I am sorry. It is not Gaston County. It is the City of Gastonia.

Q. Now, has there ever been a Negro Registrar, to your knowledge, in rural Gaston County? A. Not to my knowledge.

Q. Has there ever been a Negro Deputy Registrar or Commissioner appointed specifically to any precinct in rural Gaston County? A. Not specifically to any precinct, but the Deputy Registrars that we appointed, the Negroes, were free to register in any precinct, any of the 44 precincts in the county.

Q. They were appointed, however, with a particular relation to the precincts in the City of Gastonia, were they not?

MR. STOTT: Object. Repetitious.

JUDGE WRIGHT: The record does establish that it [64] was about a three-week appointment just before the general election.

BY MR. SCHWELB:

Q. Is it true or not that—as a matter of common knowledge—that there is a substantial amount or some amount of Ku Klux Klan activity in the rural part of Gaston County?

MR. STOTT: Objection.

JUDGE WRIGHT: We will take it subject to your objection.

MR. SCHWELB: The purpose is the same as the—

JUDGE WRIGHT: All right.

THE WITNESS: I know—I have no first-hand knowledge of it. The only thing I know are a few things I have read in the newspapers about the possibility of it, but as to having—it is only hearsay to me.

BY MR. SCHWELB:

Q. The information that you have read in the newspapers refers far more to the rural than the urban parts of the county, is that not true? A. Well, I don't know about that. I don't know what section it would be, whether it would be rural or urban.

[65] Q. Well, let me ask you this. Do you have any personal information about—strike that, please. There was a period of time in different parts of Gaston County when Negroes found it quite difficult to vote, isn't that true? A. To vote?

Q. Yes, and register. I am not referring to the last five years, but before that. A. I don't know about that. I wasn't connected with it and I don't know.

Q. Now, you referred a good deal to the judgment of the Registrar as to whether the applicant was sufficiently literate. The Registrar has other discretion, too, doesn't he? For example, I mean, he can but need not go out to people's homes to register them.

MR. STOTT: Object, Your Honors. Repetitious.

JUDGE WRIGHT: We have been through this.

BY MR. SCHWELB:

Q. To what extent did you observe personally the registration during the time of your incumbency as Chairman of the Board of Elections? [66] A. I visited all the precincts at one time or another during the time of this re-registration. Now this was particularly true prior to—I mean at the primary registration. This was in April of '62.

Q. You observed registration going on at the particular times you were there? A. Yes.

Q. Now you don't have any personal knowledge of what was going on at any other time, do you? A. Do you mean in reference to any other place at the same time or as to after the primary?

Q. Well, let me put it this way. If you were at Precinct No. 3 on a particular occasion, anything else that you know is from what somebody else told you? A. That is correct.

Q. You weren't present to know if there was discrimination going on at other times, were you? A. No, I can only be one place at a time.

Q. One place at a time. Now, I think you testified that you don't know whether there are substantial numbers of illiterate people on the registration rolls or not.

[67] MR. STOTT: Objection. Been over it.

JUDGE WRIGHT: I overrule that objection. You testified you don't know?

THE WITNESS: I don't know.

THE COURT: All right. He did say that.

BY MR. SCHWELB:

Q. Now, if the record should show that there are substantial numbers of illiterate registrants on the rolls, then future enforcement of the literacy tests would mean different standards between those illiterates already registered and illiterate people who might apply in the future, isn't that true?

MR. STOTT: Objection.

THE COURT: I sustain the objection. It is argumentative. It is also obvious.

MR. SCHWELB: Well, I have no further questions.

REDIRECT EXAMINATION

BY MR. STOTT:

Q. Mr. Davis, for the record, would you refer to your notes, if it will refresh your recollection, and tell us what date the Deputy Registrars or Commissioners were appointed, please sir? A. I do not have that information here. Is it available [68] there?

Q. All right. You testified, I believe, on cross-examination that it was in three weeks prior to the general election in 1964. Now were you Chairman of the Board of Elections at that time? A. I am sorry if I testified that this appointment was made—that these appointments for the five Deputy Registrars were made prior to the general election

of '64. I should have testified that it was prior to the primary election of '62 because most of these were made in September and October of 1962.

Q. Well now— A. —The five registrations by the registration Commissioners were made in '62 rather than '64.

Q. All right. Are you stating now that these appointments of the five Deputy Registrars or Commissioners were made prior to the primary election in 1962 of May, or prior to the 1962 general election in November? A. I am testifying that the appointments were made prior to the primary election of 1962.

Q. That would be May 1962? [69] Is that correct? The primary election is in May, isn't it? A. No, still wrong. The majority of registrations that they made were in September, October of 1962, so it would be before the primary of '62. I thought I said '64.

Q. Yes. I wanted to get the record straight.

JUDGE WRIGHT: Just a minute, please. The general election I take it is in November of '62?

THE WITNESS: That is correct.

JUDGE WRIGHT: So if the registrations were in September and October of '62 it possibly was before the general election and not the primary?

THE WITNESS: That is correct, Your Honor.

MR. STOTT: All right.

THE WITNESS: That's what I intended to testify.

BY MR. STOTT:

Q. These meetings that you stated you had with the Registrars at the beginning of the new registration prior to April 21, 1962, in the court house, at that time would you state briefly what instructions you did give to the Registrars?

JUDGE GASCH: May I interrupt you just a minute?

[70] MR. STOTT: Yes, Your Honor.

JUDGE GASCH: I understood the prior testimony to indicate the books were closed 21 days prior to the date of voting. Does that apply also to primaries as well as general elections?

MR. STOTT: Well—

JUDGE GASCH: Perhaps you could ask this and clear this up because if these men were just appointed, say, three weeks before the time that there was to be a recordation of voters and the books were closed during that period, that wouldn't be of much significance and I would like to have that point cleared up.

MR. STOTT: I will do that, Your Honor. There is testimony that in this first registration that we could not follow the system that is now followed of just 21 day closing—closing the books 21 days before the election, whether it be general or primary, because in '62 we were not permitted to—we had to follow the regular state statute which had not been amended. I will ask Mr. Davis.

JUDGE GASCH: Yes, if you would clear that up I would appreciate it.

[71] BY MR. STOTT:

Q. Mr. Davis, you have previously, as I recall, testified on direct examination as to the periods of time that the books or that a person could register from April 21, 1962 until before the primary election in May 1962. Now could you explain that to the Court, what period of time a person could register. A. From April—

Q. 21, '62 until May primary election '62. As I testified, the State Board of Elections and the Attorney General's office held us to the old statute, that we could register only on the three Saturdays and of course during the week—the two weeks within that period. Now this is for the primary of '62 when our registration began on April 21, '62.

Q. Well, just to get it clear now. A person then from April 21, '62 until May '62 primary election could register to vote only on three Saturdays, is that what you are saying? A. Three Saturdays or any time between that period of the three Saturdays. In other words, we had 15 days.

Q. You are saying then that the registration would start [72] at a certain time and would end 15 days later? A. That is correct.

Q. And the three Saturdays the Registrars were at the polling places? A. That is correct.

Q. Then you talked about a challenge day, did you not? A. That's right.

Q. Now which Saturday is that before the primary election? A. That is the Saturday immediately prior to the election date.

Q. The 15-day period then would expire before the challenge day— A. That's right.

Q. —which was the Saturday before election date. A. The 15-day registration period would expire two weeks prior to the election date. We had the end of registration, then the following Saturday was challenge day and then the next Saturday was election day.

Q. Now in the general election in November of 1962 what procedure was followed in permitting citizens of Gaston County to register to vote in the '62 general election in November? [73] A. Well, they were—immediately after the primary—I believe we had a second primary in '62, but immediately after the last election then the books were open Monday through Saturday for registration at any time, except for the 21 days before the general election which is state statute that we have to cut off.

Q. So this system of permitting people to register then went into effect after the primary election, that is, all during the year except 21 days prior to the general election in November? A. That's right. Immediately after the primary election then we were able to open the books on a permanent-type basis where anyone could register at any time during the week except the 21 days prior to any election.

MR. STOTT: Judge Gasch—

JUDGE GASCH: One further question. Do you have any restriction to the general election to the effect that one who has not registered in the primary cannot vote in the general election?

THE WITNESS: No, Your Honor.

JUDGE GASCH: Thank you.

THE WITNESS: Because you can register at any time between the primary and the general election.

[74] JUDGE GASCH: Thank you.

MR. STOTT: Your Honor, if you will just indulge me this question.

BY MR. STOTT:

Q. I believe I started to ask a question about the instructions that you gave to the Registrars in these two meetings that you had prior to April 21, 1962, the ones you had in the court house. A. We sent out letters to all the Registrars to where that we would have classes at the court house on Thursday the 12th day of April and Thursday, the 19th day of April. This was complete new registration and we used the large blackboard with the forms to be filled out.

And prior to this—may I state here that prior to the time of this meeting each Registrar was mailed two manuals, one put out by the North Carolina Board of Elections that contained the general statutes pertaining to election laws, and also a manual written by Henry Lewis, Institute of Government, Chapel Hill, North Carolina, pertaining to election laws.

And this—we went through the complete registration system and went over all requirements for registration.

We instructed the Registrars as to the state [75] requirements and that it was the duty of the Registrars to determine as to whether an individual was held eligible for registration or not.

Q. Did you instruct them at these meetings and through these letters that the Registrars were to apply the test as required by the state law uniformly to everyone? A. Yes, I did.

* * * * *

Q. Mr. Davis, the Deputy Registrars, which you appointed, the five in number, were these or did these Registrars continue to serve until the—as general or Deputy Registrars until 21 days prior to the general election in 1962? A. Yes.

Q. And also— A. They served exactly as a Registrar.

Q. And then these five people continued to serve after the election, general election in 1962, is that correct? A. That is correct. Their term of office expried at the same time that the Board of Elections term expired.

Q. What date would that have been? If you know. A. It would have been—let's see. [76] It would have been two years prior to March of '64.

Q. Two years prior to March '64? A. Let me see.

Q. If you know, Mr. Davis. A. I don't know the exact date.

Q. Were these Deputy Registrars still serving when you resigned as Chairman of the Board of Elections, to your knowledge? A. I don't believe they were. I don't—I can't recall whether appointments were made or not—I mean, re-appointments were made or not. I cannot answer that.

Q. All right.

* * * * *

RECROSS-EXAMINATION

BY MR. SCHWELB:

Q. What are the names of these Deputy Registrars, do you know? A. Yes. We had a Mr. Lynn, I believe it was Jimmy Lynn, [77] L-y-n-n-; a Lamar Rankin; Mrs. Lionell Biggers; Mrs. Beatrice W. Costner; and Mrs. Bonnie T. Massey, M-a-s-s-e-y.

Q. Which are the three Negroes? A. Mrs. Biggers, Mrs. Massey, and Mrs. Costner.

Q. You don't have any personal knowledge of their having gone out to a rural area to register anybody, do you? A. Well, they were free to operate any place that they wanted to or anyone wanted to ask them to come to.

Q. You don't know of any place they went, though? A. No. I did not supervise. They were free to operate any place they wanted to.

* * * * *

JUDGE ROBINSON: Do you know, Mr. Davis, how many new voters these three Negro Deputies managed to get registered? Do you have any statistics that would indicate the number?

THE WITNESS: Your Honor, I don't. I could have gone through it, but I didn't—

JUDGE ROBINSON: All right. You don't know.

[78] THE WITNESS: I don't know, Your Honor.

JUDGE ROBINSON: Do you know as a fact that all that were registered by these three were persons who were resident in the City of Gastonia? Is that a fact?

THE WITNESS: I don't know that. I presume that the majority of them probably would be.

JUDGE ROBINSON: Were they given any instructions by the Board or by you as to the areas to which they should go in an effort to build up the registration in the county?

THE WITNESS: No, they were not instructed to register in any particular area or precinct. We instructed them as to how to register along with—exactly like we did the original Registrars, but they were free to register at any home or any recreation area or any place that they saw fit or where that they thought they might get registrations.

JUDGE ROBINSON: Where did they live, the three?

THE WITNESS: You want the streets?

JUDGE ROBINSON: Oh, no, no. Just the general geographical location within the county.

THE WITNESS: Well—

JUDGE ROBINSON: Did they live in Gastonia?

[79] THE WITNESS: Yes, all three of these are—live inside the corporate limits of Gastonia.

JUDGE ROBINSON: Finally, Mr. Davis, and if I am incorrect let me know, I understand from your testimony that there never has been a Negro Registrar in Gaston County except these three Commissioners, is that correct, at any time in your experience?

THE WITNESS: To my knowledge that is correct, Your Honor.

JUDGE ROBINSON: Very well.

JUDGE WRIGHT: Mr. Davis, you testified in 1964 that there were 47,000 registered in Gaston County.

THE WITNESS: Yes, Your Honor.

JUDGE WRIGHT: Is that right?

THE WITNESS: I believe that is correct, Your Honor.

JUDGE WRIGHT: Do you have figures to indicate how many of this 47,000 were Negroes?

THE WITNESS: Yes, Your Honor.

JUDGE WRIGHT: Will you state it, please?

THE WITNESS: This is for November, 1964.

JUDGE WRIGHT: Yes.

THE WITNESS: We had for whites 42,376.

JUDGE ROBINSON: I beg your pardon. What was that, [80] 42,376?

THE WITNESS: 42,376, Your Honor.

JUDGE ROBINSON: Thank you.

THE WITNESS: And for Negroes 4,371.

JUDGE WRIGHT: Now do you have any figures which indicate the number of Negroes of voting age in Gaston County in 1964?

MR. STOTT: Your Honor, we have another witness who will supply this information.

JUDGE WRIGHT: Thank you very much. Thank you, Mr. Davis.

MR. SCHWELB: One further question, Your Honor.

* * * * *

BY MR. SCHWELB:

Q. Just one clarification here, Mr. Davis. You did discuss this matter of the three Negro Deputy Registrars with the FBI, did you not? A. Yes, I—he asked me.

Q. Isn't it true that you told him that three Negro women Deputy Registrars were appointed to assist in the predominantly Negro precincts which voted at the fire station, in the Highland school area of Gastonia, North Carolina? Do you deny telling him that? [81] A. Would you repeat that?

Q. Yes. That three Negro women Deputy Registrars were appointed to assist in the predominantly Negro precincts which voted at the fire station in the Highland school area of Gastonia, North Carolina? A. I think that is substantially what I—as well as I recall—we discussed it, I am positive.

Q. That is substantially true? A. Substantially correct, yes, sir.

* * * * *

TESTIMONY OF LINWOOD B. HOLLOWELL, JR.

was called as a witness by the plaintiff, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STOTT:

Q. Would you state your name, please? A. My name is Linwood B. Hollowell, Jr.

[82] Q. Where do you live, Mr. Hollowell? A. In Gastonia, North Carolina.

Q. How long have you lived in Gaston County? A. All of my life.

Q. Would you state to the Court what your business or profession is? A. I am an attorney-at-law in Gastonia.

Q. You are a graduate of the Duke University Law School, is that correct? A. Yes, sir.

Q. Now, how long have you been practicing law? A. I have been practicing law for approximately four years. I served in the Army for a period of time after I graduated from law school in which I was not actively engaged in practice.

Q. You are still in the Army Reserve? A. I am also a legal officer with the United States Army Reserve, yes, sir.

Q. Are you presently serving as the Chairman of the Board of Elections in Gaston County? A. Yes, sir.

Q. When did you become Chairman? [83] A. I became Chairman of the Gaston County Board of Elections in April of 1964. I succeeded Mr. Mack Davis, who resigned.

Q. April 1964? A. Yes, sir.

Q. At the time that you became the Chairman the new registration system was in effect and operating in Gaston County? A. That is correct.

Q. Would you explain to us now what period of time the books were open for registration or voters at the time that you took office and up to the present time? A. Yes, sir.

At the time I took office and up to the present time a person in Gaston County can register at any time he wants to throughout the year, any day of the week, by contacting the Registrar that is serving in his particular voting precinct.

A person can also register by coming to the Gaston County Board of Elections office in Gastonia at any time

between eight o'clock in the morning and five o'clock p.m., Monday through Friday, and also on Saturday mornings, on any day that he chooses, up to 21 days prior to an election. Our [84] State law requires the registration books to be closed 21 days prior to an election.

Now also the County Board of Elections requires its Registrars to be present in the polling places on certain Saturdays prior to a major election.

We do this for the convenience of those desiring to register. We are not required to have our Registrars in the polling places, since they are available throughout the year, but we do this because we feel that there may be some people that are working who can't come to the Elections office or for some reason may not be able to contact their Registrar when it is convenient for them to do so.

So these three methods are the way that we register persons.

Q. Someone is kept in the Board of Elections office, an executive secretary, so to speak, throughout the entire week? A. Yes, sir.

We have a permanently—a permanent employee paid by the county who is authorized to register anyone presenting themselves for registration.

Q. An office of the County Board of Elections is maintained at a separate location from the court house in [85] Gastonia, the county seat, is that correct? A. Separate office not connected with any other government building, but it is centrally located in the City of Gastonia, which is, of course, the county seat.

Q. Right. When you became Chairman in April 1964, what type of test was being used in Gaston County, if any— A. When I—

Q. —for registration? A. When I became Chairman the oral test was used, the same type of test that Mr. Davis testified to. Of course, in July of 1964, the Federal Voting Rights Act was passed which—I mean the Federal Civil Rights Act was passed, which required all literacy tests to be in writing and as soon as I learned that this Act had been

passed by the Congress, then we, in our county, immediately abolished any type of oral literacy test and we prepared a written literacy test in accordance with, as we understood it, the 1964 Civil Rights Act.

Q. Now, Mr. Hollowell, we have identified already for the record a copy of a test, of a written test that was used in Gaston County. Do you have a copy of that before you? [86] A. Yes, sir.

Q. It was marked for identification as Plaintiff's Exhibit A. How was this test prepared and how was this particular thing, this particular test, arrived at? A. The—of course, the law of our state holds that a person must be able to read and write any section of the North Carolina Constitution. And as of the '64 Civil Rights Act that requirement was modified to only write any portion of the Constitution.

The Board of Elections, as soon as we learned of the passage of the '64 Act, in order to determine the type of written literacy test that we would require to be applied to register to vote, we had no specific instructions as to how to devise this test from the State Board of Elections.

Therefore, it was in our discretion.

We met—the County Board of Elections met and we picked out the three shortest and simplest sentences in the North Carolina Constitution.

We set them forth on a form, a written form, and we instructed—the instructions on this literacy test are that an applicant for registration can pick any one of these three sentences that we set forth and he can write or print [87] any one of those three sentences.

We did not require him to print all three, but just choose the one that he desires.

And we provided a space below the sentence for that person to write or print that sentence of the Constitution.

Also at the bottom of the written literacy test we set forth words to the effect that if a person was denied registration because he cannot pass this test, then it is set forth his right of appeal and we instructed every Registrar in our county that if they had to turn down somebody because

they could not pass this written test, that they must state to that person their rights to appeal the decision of the Registrar to the Gaston County Board of Elections.

And it sets forth that right of appeal on the written test also.

Q. Well, what were your instructions to Registrars in regard to giving the written test? A. We called a meeting of every Registrar in Gaston County as soon as we devised this test, or determined what the test would be.

And my instructions to these Registrars were that we wanted every person in Gaston County to be registered if at all possible.

[88] We instructed them that the reason that we chose these three short sentences and gave the person the right to chose the one he wanted was an attempt to make the test as simple as possible and that our purpose was to—the purpose was not to prevent anyone from registering unless we had no choice under the state law—unless he could just not read and write.

Now, we—I told them that they should not require an applicant for registration to be able to spell each word exactly or even to be able to write every word in that sentence.

We told them that we just wanted them to be satisfied that the applicant for registration reasonably could print or write one of these three sentences.

Now, we have—I know that there are many registrations that we have accepted in which the person could not write or did not write every word in that sentence.

And I instructed my Registrars that that was not necessary, that they did have—should be as lenient as they possibly could with an applicant.

Q. Now, were the Registrars instructed that if a person should take this written test and failed to pass the test, to retain any copy of the test that a person failed to pass? [89] A. That is correct. That was my understanding that the 1960 Federal law required that and any person that was—that actually undertook to write any portion of this test and was refused registration I instructed the Registrars to

preserve that test and to deliver that test to the County Board of Elections.

Q. Of your own knowledge, Mr. Hollowell, do you know or were there any tests or did any person in Gaston County take that test or attempt to take this test that failed to pass it? A. To my knowledge anyone who attempt to print or write this test passed. No one to my knowledge has ever been rejected for registration who actually attempted to write or print this literacy test.

Q. All right. A. No one to my knowledge. Now, I might also add that, of course, the person who is applying for registration did not have to be able to interpret any of these sentences or any of the words. He could be completely ignorant of the meaning. And also we told the Registrars to allow applicants to take as much time as they wanted. I know of certain instances to my own personal [90] knowledge that an applicant has come in to register and he was having a difficult time and the Registrar would let him stay there and study the test for an hour or more and actually try their best to help him and that is what they were instructed to do.

Q. After a person had taken this test and was permitted to register, what, if anything, was done with the test? What did the Registrars do and what were they instructed to do? A. Well, the Registrars were instructed that everyone that presented themselves for registration and that was registered had to take the test. No exceptions were made; even if the Registrar was a personal friend of an applicant and knew that he was literate. Every—each Registrar was instructed that no registration would be accepted unless it was accompanied by a written literacy test. And we have preserved in the office of the Board of Elections the written literacy test for each applicant that was registered under the—registered since the Civil Rights Act of 1964.

Now that Act—I think I have answered.

Q. All right, sir. Do you have or do we have in Gaston County any Negro Registrars, regular Registrars of any precinct? [91] A. Yes, sir.

Q. How many? A. We have one Negro Registrar at the present time and I—or the Board of Elections appointed that Registrar in 1965.

Q. State whether or not that was prior to the time, of course, that Gaston County was placed under the Act because of the failure of 50 percent of those eligible to— A. Well, that was at least well over a year before that time.

Q. All right. What is that person's name? A. Her name is Elsie Saunders.

Q. What precinct is that, Mr. Hollowell? A. She is Registrar of Precinct No. 7, which is designated as Highland Precinct.

Q. Is she presently serving in that capacity? A. Yes, sir.

Q. Well— A. I also may add that there have been Negro judges on election days in that precinct and in other precincts in Gaston County who were Negroes.

Q. Now, is she permitted to register anybody outside [92] of the precinct that she is Registrar of? A. No, sir.

Q. Now, that is Precinct No. 7, I believe you said. A. Each Registrar can only register persons living within the physical boundaries of his or her particular precinct.

Q. That would not be true of a Deputy Registrar, as Mr. Davis has testified? A. That is correct. They can register anywhere.

Q. Prior to the general election of November 1964 could you tell what steps or tell us what steps were taken to get the people of our county to register so that they may vote in that election? A. Yes, sir. We tried to inform people of our county by every means available.

We—well, I, as Chairman of the Gaston County Board of Elections ran paid advertisements in the Gastonia Gazette and in every published newspaper in our county.

They were half-page ads, in some cases full-page ads, notifying people that they must be registered in order to vote, notifying them of the date of the election and notifying them of the registration deadline and also listing the name and [93] address and telephone number of every Registrar

in Gaston County, or within the area that the newspaper had circulation, and also notifying them that they could register either with their Registrar or with the Election Board or on the certain Saturdays that we required the Registrars to be in attendance at the polling place.

And this type of newspaper advertisements has been done prior to every major election since I have been Chairman of the Board of Elections.

It was done before the 1964 primary, which was the first election that I had anything to do with.

It was run—half-page ads were run in the Gastonia Gazette, once a week for three successive weeks in the Gastonia Gazette, and also the same number were—I have the dates here.

We ran a full—half-page ad, rather, in the Gastonia Gazette on April 5, April 22, April 29, and May the 6th, 1964.

Before the general election of '64 we ran a half-page ad in the Gazette on September 10, September 16, September 18, September 22, September 25, September 29, October 2, October 6, and October the 9th.

This was—all these advertisements were in the [94] Gastonia Gazette.

Q. In 1964? A. '1964. And also, although I do not have the specific dates, in all of our county newspapers.

We ran advertisements in these papers sometimes on a quarter-page because that newspaper had circulation over a limited number of people and we only set forth the Registrars in that circulation area.

And also some of these other newspapers are only published once a week and so we—well, at any rate, we did advertise in every published newspaper in the county.

In addition to newspaper advertisements, I printed or I prepared a letter addressed to the parents of all Gaston County school children and these letters indicated that an election—or the general election of 1964 was forthcoming on a certain date and that the registration deadline would fall 21 days before the election date, and that persons had to be registered.

We set forth how they could register, where they could register and encouraged them to register.

And we did this to try to get the word out as well as we could.

[95] Now these—before the '64 general election I had 34,000 of these letters printed under my supervision, by the Gaston County, and they were distributed to every school in Gaston County, grades one through twelve.

Now, in addition to that, I, of course, stated that we put Registrars in polling places on designated Saturdays as a convenience and not because we were required to.

And furthermore I had directed the executive secretary of our Election Board office to go into the homes of Negro citizens who—that we had arranged for—at night to register Negroes who had jobs or for one reason or another could not contact their Registrar or could not get to the Election office.

I might add that Doctor Cleveland Floyd—he is a Negro leader of our county—contacted me and advised me that he thought that there might be some Negroes who were or it was inconvenient for them to register during the day with their Registrar or the Board on Saturdays, and so we arranged to have the secretary to the Gaston County Board of Elections go to the home of a Negro in the nighttime prior to the '64 general election at which time she would register any Negro that would present themselves that was qualified to vote.

And Doctor Cleveland Floyd and other leaders of our [96] county advertised by fliers and all other types of advertising to try to get the word out to anyone that wanted to take advantage of this and this was done at least on four or five separate nights and it was done as long as anyone indicated that it might be worthwhile.

Q. For the record, I would like to just show you this letter marked for identification, which is Plaintiff's Exhibit D in evidence, and ask you to state is that a copy of the letter that was mailed to all of the—that was delivered through the schools to all of the parents of Gaston County school children? A. Yes, sir.

Q. Do you recall the name of the person who did the registration and went to the homes of Negroes and other

places, Mr. Hollowell, prior to the general election in 1964, to register voters? A. Yes, sir. Mrs. Maralee Query, Q-u-e-r-y, was the lady. She was the executive secretary to our Board.

Q. Was she a white person or a Negro? A. She was a white person.

Q. Now, the regular Registrars, what, if any, activity did any of them have or what did any of them do prior to the [97] general election in 1964 to get people registered? A. Well, our state law, under our loose-leaf system, says that a person may register with the Registrar in his or particular precinct at any time.

So we instructed our Registrars to make themselves available and to be present at their homes as often as possible so that if someone wanted to call them to be registered that they would be available.

And I also encouraged them to actively seek out registrants for voting and that if they knew someone in their voting precinct that was not registered, that it was perfectly all right to mention it to them.

We didn't want to force anybody to register but at the same time we wanted to make it available to the person.

Q. Now, what steps, if any, were made prior to the—well, after 1964, if any in regard to any election in Gaston County to encourage registration among its people? A. You mean before the '66 election?

Q. Yes. A. Well, again we advertised in the newspapers to the same extent that we had advertised for the '64 election. We continually met with the Negro leaders in our community and, of course, I am very good friends with them [98] anyway, and I know them and they call me from time to time, and we discussed it, and not only Negroes but white people—

Q. All right. A. —and tried to make it available.

Q. This was advertised in newspapers that you are referring to now? A. Yes.

Q. In '66 and '64? A. Yes, sir.

Q. Do you know what the circulation figures for the newspapers in Gaston County are in the years of, say, 1962, '64, '66, Mr. Hollowell? A. Yes, sir.

Q. Tell us first what newspapers to your knowledge are published in Gaston County? A. The Gastonia Gazette is published in Gastonia. The Belmont Banner is published in Belmont. The Bessemer City Record in Bessemer City. The Mount Holly News in Mount Holly. And the Cherryville Eagle in Cherryville.

Q. Are all of them weekly papers except the Gastonia Gazette? A. That is my understanding, yes.

[99] Q. Do you know the circulation or what the circulation was of the Gastonia Gazette in the year 1962? A. I checked that recently and I have found that.

Q. Would you state what that circulation is? A. For the Gastonia Gazette, the circulation as of March the 1st, 1962, was 23,442; as of March the 1st, 1964, 25,111; as of March the 1st, 1966, 27,668.

Q. Would you take the other newspapers and give the dates for the three years, 1962, '64, and '66—not dates, I am sorry, but the circulation of those years? A. In 1962, I do not have a specific calendar date for that year, but I assume at the end of the year—in 1962 the Belmont Banner had a circulation of 2,850; in the year 1964 the Belmont Banner had a circulation of 2,632; in 1966, the Belmont Banner had a circulation of 2,100.

Now, the Bessemer City Record, the circulation for 1962 was not available.

Q. All right, sir. A. I could not learn it. For 1964 the circulation of the Bessemer City Record was 1,370; the circulation for the Bessemer City Record in 1966 was 1,000.

Now the Mount Holly News, in 1962, the circulation [100] was 2,600; the Mount Holly News in 1964, 2,700; the Mount Holly News circulation in 1966, 2,100.

Now the Cherryville Eagle, the circulation in 1962, 3,200; in 1964, 3,200; in 1966, 3,500.

That is all of the papers.

Q. From the records in the Gaston County Board of Elections office, Mr. Hollowell, how many people were registered

voters in Gaston County in November, 1962? If you would and break that down since the question has been asked in number, the number of white persons registered in November, 1962? A. Yes, sir, I have that. In November of 1962 there were 33,162 white people registered.

In November of 1962 there were 2,809 Negro people registered.

Q. In 1963 can you give us the figures for that year? A. In 1963, in November of '63, there were 33,384 white people registered.

In November of '63, there were 2,815 Negro people registered.

In November of 1964, there were 42,376 white people registered.

[101] And in November of '64 there were 4,371 Negroes registered.

In November of 1965, there were 42,794 white people registered.

And in November of '65, there were 4,371 Negroes registered.

In November of 1966, there were 42,898 white persons registered.

And in November of 1966 there were 4,381 Negroes registered.

I also have the figure as of June of 1967.

Q. Would you give that to us for the record, please? A. As of June 1967, there were 43,874 white persons registered.

And in June of '67, there were 4,388 Negroes registered.

JUDGE ROBINSON: May I intrude just a moment? I have the same figure for registered Negro voters in November of '64 and '65, 4,371. Is that correct?

THE WITNESS: That is correct.

JUDGE ROBINSON: That would give us exactly the same for both years?

THE WITNESS: That is correct. [102] We had no election between those two dates and the registration interest is—

JUDGE ROBINSON: This is correct then?

THE WITNESS: That is correct.

JUDGE ROBINSON: I just wanted to make sure I put it down correctly.

* * * * *

[103] BY MR. STOTT:

Q. Mr. Hollowell, before lunch, as I recall, the last question that I asked pertained to whether or not the executive of the Gaston County Board of Elections or any Registrar, that you know of your own knowledge, had been to places other than the polling places to register voters in the county Then I asked you who the executive secretary was, as I recall, is that right? A. That is right.

Q. I believe that you were giving us figures now, in the last question before lunch. Was the last figure that you gave to us pertaining to the number of registered voters in Gaston County as of June 1967? [104] A. Yes, sir, I gave you a breakdown as to the Negro and white voters as of certain years ending in June '67.

Q. I would like to go back just one moment and ask you whether in 1966 prior to the primary in May of '66, and prior to the general election of 1966, did you run ads in the newspaper and, if so, was it the same type of ads and do you know the number of times that you ran ads, as you did in '64? A. Yes, sir, we did run the ads and they were the same type of ads that we ran in '64. However, I do not have the specific dates that I ran these ads in '66, as I had in '64. And I cannot say of my own knowledge that I ran the same number of ads in '66 as I did in '64. But I did run more than one ad in each newspaper, but I cannot testify that they were exactly the same amount as I did in '64. We ran more in '64 I think than in '66 because '64 was a presidential election year and we felt that there would probably be more interest in registration then than in '66.

Q. All right, sir. Now, do you know how many of those registered voted in the general election in November 1964? A. Yes, sir.

Q. Would you give us those figures, please? [105] A. In November of 1964 prior to the general election, the total number of registered voters in Gaston County was 46,747.

In that presidential election, the general election of November '64, the total number of persons in Gaston County who actually voted was 37,326.

Q. Do you know how many of that 37,326 were Negro voters? A. Yes, sir.

Q. Would you state what that number was? A. The total number of Negro voters in that presidential election was 3,014.

Q. That was out of the 4,371 registered? A. That is correct.

Q. Now, do you know the number of white people who voted in the 1964 November general election? A. Yes, sir.

Q. How many? A. 34,312.

Q. Have you had an opportunity to compute that on a percentage as to the number of Negroes that voted as to those registered? A. Yes, sir.

Q. How many? What is the percentage? [106] A. The percentage of Negroes who were registered as compared to those voting, 68.95 percent.

Q. Have you computed it on a percentage basis as to the percentage of whites who voted as opposed to those who were registered? A. Yes, sir.

Q. What is that percentage? A. That percentage is 80.97 percent.

Q. Now, Mr. Hollowell, what notice, if any, did you receive that Gaston County was placed or had been placed under the Voting Rights Act of 1965? A. As well as I can recall I was not aware that the 1964—excuse me, are you talking about the '64 Act. Is that—

Q. No. A. '65?

Q. No, when we were placed under the Voting Rights Act of 1965. A. I received a letter from the Attorney General of the United States telling me that Gaston County had been determined by the Department of Commerce, the Census Bureau, that a certain percentage of persons in our county had not voted in the presidential election of '64 and that, therefore, all literacy [107] tests should be suspended in our county from that point.

But I learned about the fact that we were under the Act prior to that time.

I believe that I got a letter from the office of North Carolina State Board of Elections, but no one, the Census Department or no Government official or anybody officially notified me of this until I got a letter from the Attorney General.

Q. Did you respond to the Attorney General's letter? A. Yes, sir. I wrote him back and actually we suspended the test in our county as soon as I heard of it from the State Board of Elections.

And I wrote to the Attorney General in response to his letter and informed him that I had received it and that the literacy test in Gaston County had actually been suspended prior to the time that I received his letter.

I don't recall the exact dates—

Q. All right. A. —that I got the letter.

Q. Do you know how many counties in North Carolina now have the modern loose-leaf type registration system that is in use in Gaston County? A. Mr. Stott, I can—I know approximately. I cannot [108] say exactly because some counties could go into the—act at any time.

Q. How many? A. To the best of my knowledge there are approximately 15 counties in North Carolina out of 100 counties that have adopted this loose-leaf system and I also think that at the time that our county adopted it in '62 there were probably 10, 11, 12, something like that, approximately.

Q. Would you tell us whether or not in any of these newspaper advertisements that you have referred to as being published in 1964 and 1966 whether there was any mention made that a literacy test or that a person would be required to pass a test of any kind before they would be permitted to register? A. No, sir, we did not set that forth in the newspaper articles.

In the newspaper articles we only informed the voters of where they could go vote—I mean, register, where they could register and what date we would have to stop accepting applications for registration.

We made no mention about any type of literacty test in our advertisements.

Q. Now, after March 29, 19– A. Excuse me. That is to the best of my knowledge. [109] I have checked some advertisements, the ones that we could find, and I did not see it there. But to the best of my knowledge that is true.

Q. All right. Now, if a Registrar had a person to apply for registration that was blind or disabled, what instruction did you give to the Registrars in regard to people who would fall into that category or those categories? A. Well, sir, the state election laws do not provide for this to my knowledge.

And I have discussed it with several officials of the State Board of Elections and we, as a result, I advised our Registrars that if a person was unable to read or to write because of some physical infirmity that if the Registrar could satisfy himself that this applicant could read and write, but was just unable to do so at the present time because of this physical disability that he could register that person, but that he should indicate on the registration slip that this person was blind or had arthritis or was physically unable to write for some reason, because we did not feel that a person should be denied the right to vote because of some physical handicap that he couldn't help, if he was otherwise– if he could read and write before the infirmity.

[110] Q. Do you know of your own knowledge that some who fall into these two categories that I mentioned were permitted to register and to vote in Gaston County? A. Yes, sir. I have learned since this investigation was instituted by the Justice Department that there are some registration cards in our elections office wherein it is indicated that the Registrar signed for an applicant because the applicant was blind or for some other reason.

Q. If the Registrar did sign for that reason, did you instruct them to indicate on the registration card? A. Yes, sir.

Q. After March 29, 1966, the date of publication in the Federal Register that Gaston County had–that less than fifty percent of those eligible to register had done so in Gas-

ton County, did you—do you have any figures to show what increase in registration we have had for whites and Negroes since coming under the Act when no test has been administered? A. Well, sir, we were placed under the 1965 Civil Rights Act in—as well as I can recall, either in—we learned of it in September, I believe, of 1966, or in late August. I am not sure exactly of the date.

[111] But as of that time we had approximately 4,381 Negro citizens registered. That figure is taken from my November of 1966 statistics.

And in June of 1967 there were 4,388 Negroes registered which is an increase of only seven, so my answer would be that there had been no significant increase in Negro registration in our county since our county has suspended the use of a literacy test.

Q. Now, would you take the same figures and tell us about the number of whites that have registered, if any, or the increase, if any. A. Well, sir, in November of 1966, my figures indicate that there were 42,898 white persons registered and in June of '67 there were 43,874 white persons registered, so there has been an increase in the number of white registrants of approximately—a little bit less than 1,000, according to my figures.

Q. All right, sir. Now, do you know what number of citizens that were of voting age as of January 1, 1966, in Gaston County were Negroes? A. Yes, sir. I know as of January the 24th, 1966, according to a census that was conducted in our county by the United States Department of Commerce, Bureau of the Census. [112] I have the report in my possession.

Q. Would you tell us what that number of Negroes of voting age was at that time? A. According to these statistics of the Government, as of January 24, 1966, there were 3,631 male Negro citizens over 21 years of age residing in Gaston County. And as of January 24, 1966 there were 4,740 female Negro citizens over 21 years of age residing in our county. And my figures indicate that that is a total Negro population over 21 years of age as of January 24, 1966, of 8,371.

Q. Now, then, in 1965, I believe you have testified that there were 4,371 Negroes registered? A. That was in November of 1965, yes, sir.

Q. All right. Now, have you computed that, Mr. Hollowell, as to the percentage of eligible Negroes to register that were actually registered? A. Yes, sir, I have.

Q. What is that? A. I find that comparing the 1965 figures of the number of registered Negro voters in Gaston County to the 1966 Census of Negro citizens over the age of 21 living in Gaston County, [113] that there were 52 percent of the Negro citizens of our county registered to vote.

Q. Now, from your records it indicates, however, that less than fifty percent of the white population of 21 and over had registered, is that correct? A. Well, sir, I have not computed those figures. I have them here but I have not actually computed them.

Q. All right, sir. Well, would you— A. For the record, let me clarify one thing. I don't know if I said it for the record, but there were 52 percent of the Negro citizens who were 21 years and over that were registered. Of course, under our law they have to be 21 in order to do this.

Q. All right, sir. Now, would you explain to us what was paid to these Registrars for the work that they did as Registrars in our county? A. Yes, sir. Our Registrars are all paid uniformly regardless of the size of the precinct that they may be connected with.

[114] We pay the Registrars $.50 per name for every new registration that they obtain other than on a day in which they are required to attend the polling place for the convenience of registrants prior to a major election.

On those days we pay our Registrars $20 per day if they are in the polling place or $.50 per name, whichever sum may be greater.

On election days, the days that people actually come in to vote we pay our Registrars $25 for that election day.

I might add that the state law requires us to pay Registrars a minimum of $15 per day on election day, but that it is entirely discretionary as to any other amount.

And the Board of Elections, of course, had the money appropriated by the county and we decided to pay $.50 per name to each Registrar for obtaining.

Q. Now, before this suit was instituted by Gaston County, what if anything, did you do to determine whether or not there had been any discrimination within a period of five years preceding that time because of race or color in regard to registration. A. Well, sir, as soon as I learned that we were under the Act and, therefore, as I understand it, presumed to have [115] discriminated, I was absolutely shocked and I knew of no discrimination in our county.

But I wanted to make sure so I personally contacted whom I considered to be the outstanding Negro leaders in our county. This was from Gastonia and all other towns involved. And I talked with these people and tried to ascertain if they knew of any discrimination. We tried to meet at the court house in Gaston County one evening to discuss this problem. I do not recall the exact day but I think there were approximately 12, 13, 14 persons there, all of whom were Negroes except for maybe on or two.

We also had the publisher of the Gazette there because we thought that he might have heard something. We met there and discussed this problem and no one at that time knew of any discrimination.

MR. SCHWELB: Objection, Your Honor.

* * * * * *

MR. SCHWELB: I think he should not be permitted to state what somebody else stated.

JUDGE WRIGHT: I sustain the objection.

BY MR. STOTT: [116] Q. Well, as a result of this meeting that you had on that occasion, did you later have another one? A. Yes, sir. We decided or I instructed these people—not instructed them; but requested that we actively try to find out by asking persons, by talking to people, by announcing it particularly in the Negro population, among that population, because I assumed that is whom we were supposed to have discriminated against. And so those who met there went out and actively tried to find if there was any discrimination and I—

MR. SCHWELB: I object again unless he knows this of his own knowledge rather than what somebody told him.

THE WITNESS: I know it of my own knowledge.

JUDGE WRIGHT: Will you tell how you know of your own knowledge?

THE WITNESS: These gentlemen that were at the meeting told me that.

JUDGE WRIGHT: I sustain the objection.

* * * * *

[117] BY MR. STOTT:

Q. Now, did you later meet with these same people, Mr. Hollowell, after this meeting? A. Yes, sir.

Q. All right. Do you know whether some of these people that were there are here today to testify in this case? A. Yes, sir.

* * * * *

CROSS-EXAMINATION

BY MR. SCHWELB:

Q. Mr. Hollowell, I believe you are an attorney, you testified? A. Yes, sir.

Q. And you are a law partner of Mr. Stott who is representing the county here, isn't that right? A. Yes, sir.

Q. And your father is another one of his law partners, isn't that right? A. Yes, sir, the three of us are in practice together.

[118] Q. Actually, although you are in one sense a client here, you participated considerably in preparing this complaint, didn't you? A. Well, sir, I didn't write it. I gave Mr. Stott all the information I could to assist him in preparing it.

Q. Well, you know what is in it? A. Yes, sir. I have read it.

Q. And you know—you participated to some extent in negotiations in connection with this? A. Yes, sir, I have been present when Mr. Stott has talked to you and other officials.

Q. You have talked to me also? A. Yes, sir, yes, sir.

Q. And the fact that you are an attorney yourself has certainly—you would agree—had some effect on your participation in this case in dealing with different people?

MR. STOTT: Objection.

JUDGE WRIGHT: I sustain the objection.

BY MR. SCHWELB:

Q. Now, let me ask you, Mr. Hollowell, generally speaking, is it true that the principal reasons for your bringing this suit were one, to clear the name of Gaston [119] County, and two, to reinstitute the literacy test? A. You are asking me why we instituted the suit?

Q. Yes. A. Well, sir. We instituted the suit because we do not feel that we have discriminated on the basis of race and we feel like that as long as we are under the Act that this would place—put our county—give it a very bad image because—or maybe a stigma because I presume that counties that are under this Act are presumed to have discriminated and we don't feel that we have.

Now, insofar as reinstating the literacy test, I realize that if we are successful in this law suit that the literacy test will be reinstated under our state law, but the main reason was because of the fact that we didn't think that we had discriminated and that we had a bad image in this country.

Q. With respect to that image, there has been a stipulation filed in this case that you know of, with respect to whether or not you deliberately advised Negroes that they couldn't vote because of their race, is that right? A. Yes.

Q. And I think you were present at a conference in which one of your attorneys said that you couldn't ask for [120] more than that in connection with—

MR. STOTT: Object to that.

JUDGE WRIGHT: What is the purpose of that question?

MR. SCHWELB: Your Honor, I think the proof I am going to try to make here, generally speaking, is primarily connected with our second defense and is that the impact of the suit can have no other effect than to institute the literacy test and that is the only real issue left, and that he had some dealings in this connection, that this will create

a very considerable contrast with the standards that have existed in the past. That is the reason I am trying to pursue that line of questioning.

JUDGE WRIGHT: Suppose you—

MR. SCHWELB: In other words, I am trying to—

JUDGE WRIGHT: —rephrase your question—

MR. SCHWELB: Well—

JUDGE WRIGHT: —from that standpoint.

BY MR. SCHWELB:

Q. Well, you feel, don't you—do you believe that the Justice Department is being prepared to let you clear your name other than by—

MR. STOTT: I object to that.

[121] JUDGE WRIGHT: That doesn't follow from your explanation of what you wanted to—

* * * * *

JUDGE WRIGHT: I thought that you were trying to suggest that he had made an admission at one time or another with respect to what went on prior—

* * *

MR. SCHWELB: No, sir. That was not my purpose.

JUDGE WRIGHT: What was your purpose?

MR. SCHWELB: I must have misstated the grounds if Your Honor didn't follow me. I think that the purpose of the questioning is this, Your Honor: that from his testimony the desire to clear his name and the result of reinstituting the literacy test would dominate the reasons for this law suit and I am trying to show that the clearing of the name—they could do that without reinstituting the literacy test and, therefore, the institution of the literacy test is the principal thing the law suit is about.

JUDGE WRIGHT: You say that he can clear the name of Gaston County without reinstituting the literacy test?

MR. SCHWELB: Through dealings he had with the [122] Justice Department.

* * * * *

MR. SCHWELB: If Your Honor has trouble, I will withdraw that.

JUDGE WRIGHT: Well, withdraw it because I am not following you.

MR. SCHWELB: All right.

JUDGE ROBINSON: Is there any question in this case about the reinstitution of the literacy test in the event the plaintiff in this action prevails? Is there any question about it?

MR. SCHWELB: Well, of course, that depends on the court's order and depends on to what degree the plaintiff prevails and it depends on the effect of this '64 Civil Rights Act, on the result also. And they could theoretically get out from under the Voting Rights Act which is an immediate purpose of the test. That would be—

JUDGE ROBINSON: The literacy test is suspended—

MR. SCHWELB: Yes, sir.

JUDGE ROBINSON: —only for so long as the plaintiff in this action does not prevail, is that correct? If the plaintiff prevails—

[123] MR. SCHWELB: That is true, Your Honor.

JUDGE ROBINSON: —we revert to the situation as it was prior to the suspension and this is a matter of state law. I had thought there was no question about that.

MR. SCHWELB: Well, there is no question about that, subject to the 1964 Act, of course. The 1964 Act may require them not to have a literacy test even if they went on the Voting Rights Act, because the statute provides that you can't have more stringent standards than your actual standards in the past, you see.

JUDGE WRIGHT: All right, sir. Proceed.

BY MR. SCHWELB:

Q. Now, have you become aware during the litigation of this case that there are illiterate people and particularly white illiterate people registered in many of your precincts?

A. Well, I have been told by you and Miss Gallagher and I have attended one deposition—I think just one—in which I heard a man testify that he was a white man and that he could not read and write. Now, I am not aware that this is widespread in our county but I have been—I have learned through you and Miss Gallagher that there are some that—

Q. You haven't read the–

[124] JUDGE WRIGHT: Let the witness finish.

MR. SCHWELB: I am sorry.

THE WITNESS: I was going to say that I understand that there is about–they have told me there are about 29 or 30.

BY MR.SCHWELB:

Q. You haven't read all the depositions yet? A. No, sir.

Q. Now, it is not your plan, is it, at the present time to have any total re-registration of voters? A. No, sir.

Q. It is not your plan to purge anybody off the registration lists? A. Well, now, we purge our books continually.

Q. I mean anybody for illiteracy that is now registered? A. No, sir, no, sir.

Q. You understand, do you not, sir, that the North Carolina statute requires more than a reading of merely a few simple words and writing one's name? A. No, sir, I don't understand that. I am not sure–I don't understand your question.

JUDGE WRIGHT: Well, I assume that the statute speaks for itself. We can interpret it as well as he can, so [125] let's proceed.

MR. SCHWELB: All right, Your Honor.

BY MR. SCHWELB:

Q. The evidence that you know of in this case is not going to influence you, so far as you know, in the standards that you will apply if you win this test?

MR. STOTT: Objection to that question.

JUDGE WRIGHT: What is the purpose of that question?

MR. SCHWELB: To determine if he is going to do anything other than the letter of the North Carolina law because of the proof in this case.

JUDGE WRIGHT: Is the question whether or not the registration will continue if this suspension is lifted as it was proceeding before? Is that the question?

MR. SCHWELB: It was a similar question. Why don't I ask him that, Your Honor.

BY MR. SCHWELB:

Q. Will you continue your registration as you had it before if the suspension is lifted—before the— A. The same system will be in effect but we will, of course, continue to use the written literacy test according to our law, but the process will be the same.

[126] Q. Do you propose to make any changes whatever from the prior practice? A. I can't make any changes that I know of because the law sets forth what I have to do.

Q. You are going to execute the law in the same way you did in the past? A. As fairly as I can possibly do it.

Q. Now, you have never advised the general public in Gaston County that illiterates may be registered, have you, before the Voting Rights Act? Never made any public announcement— A. No, sir, I have not.

Q. You didn't even do that during the Voting Rights Act, did you? A. I have—now, when—I have never made any statement to the effect that illiterates could be registered prior to the time that we were placed under the '65 Act. Now after the '65 Act was applied to our county, I told many people that a literacy test would no longer be required for registration, but I did not say illiterates can now register. I just said people don't have to take a literacy test or be able to read or write.

Q. Referring to the publicity which you described that [127] the Board of Elections put out during the periods, these various items that are in evidence, at no time when they were put out was it announced that the literacy test had been suspended, is that true?

MR. STOTT: Object.

JUDGE WRIGHT: On what grounds do you object;

MR. STOTT: Well, Your Honor, at that time, of course, we were not under the Voting Rights Act, the dates that he is referring to.

JUDGE WRIGHT: I think it's all been made clear. As I understand it, I think we are going over the same ground. This witness has testified that there was advertising in '64, '66 and '62, with reference to registration, to encourage the

people to register, and at no time in '66, '64, or '62 was any reference made in that advertising to the literacy test, whether it had to be taken or whether it didn't have to be taken. Is that your testimony?

THE WITNESS: Yes, sir, that is my testimony, except I don't want to—I think I stated that it is possible that some reference may have been made at some time, but to the best of my knowledge no reference was made in our paid advertisements, concerning a test, but I can't categorically [128] say that because it could have been in one, but none that I can find.

JUDGE WRIGHT: All right.

BY MR. SCHWELB:

Q. Now, this lack of reference to a literacy test, you also never referred to the lack of a literacy test, have you? A. In our advertisements?

Q. That is correct. A. No, sir, we made no mention of qualifications for registering as I can recall, in any of our advertisements, only stating how and where and when a person could register.

Q. Let me ask you, Mr. Hollowell, whether you know when the North Carolina literacy test was first adopted? A. You mean in our state constitution?

Q. Yes, sir. A. No, sir, I do not know the year.

Q. Well, did you know that it was enacted simultaneously with a grandfater clause and with a —

MR. STOTT: Your Honors—

MR. SCHWELB: —poll tax and—

MR. STOTT: —the statute shows—

JUDGE WRIGHT: What is the purpose of this?

[129] MR. SCHWELB: I think again, Your Honor, I am not going to dwell on this, but the purpose of it is to show that there was an original purpose to exempt white people from the standards of the law and that that has—that has shown the—been consistent with the practice that has existed ever since then.

JUDGE WRIGHT: That is a matter of argument. I sustain the objection.

BY MR. SCHWELB:

Q. Now, you heard the testimony of Mr. Davis previously with respect to certain discretion given to Registrars? A. Yes, sir.

Q. You didn't hear anything inaccurate in that?

MR. STOTT: Object to that.

JUDGE WRIGHT: What is the basis of your objection?

MR. STOTT: Well, I don't think that this witness should be required to say whether another witness was accurate or inaccurate. I think that is a matter for the court.

JUDGE WRIGHT: Would your testimony with reference to how the tests were conducted and the instructions given the Registrars generally be the same as Mr. Davis' testimony?

THE WITNESS: Yes, sir, but, of course, I was only [130] chairman for a few months when we were permitted to give an oral test so except for a few months all of mine—all the tests while I was chairman were the written tests.

JUDGE WRIGHT: All right. Judge Gasch has suggested that perhaps you can't answer the question unless you know, and, of course, that was implicit in the question.

THE WITNESS: To be truthful, Judge, I didn't listen to Mr. Davis' testimony was respect to whether he was right or wrong. I heard it but I made no—it didn't come to my mind whether he was right or wrong because I just didn't—

MR. SCHWELB: Your Honor, I was trying to shorten my examination, but I rather think I just can't shorten it.

JUDGE WRIGHT: Just take the witness. You can't shorten it then.

MR. SCHWELB: All right.

BY MR. SCHWELB:

Q. Well, let me ask you this. The discretion is left to the Registrar, isn't it, as to whether somebody has shown sufficient literacy? A. Well, it's left to the Registrar to a certain extent. [131] The law of North Carolina, of course, has to be upheld, as I understand it, and we instructed the Registrars that the applicant had to read and write—I mean, had to write in my case, and they had to have the discretion in our law as to whether or not that person could do

it, could read and write, but we told them that if they could reasonably read and write any section then they could be registered, but if a person—I specifically instructed—that if an applicant could not read and write at all then he could not be registered and she had no discretion to do that—

Q. Did you— A. I couldn't—I didn't say if the applicant cannot write a word "and"' or "the" you can't register them, I had to leave a certain amount of discretion.

Q. Did you also give them some written instructions in the form of a book? A. Yes, sir. The Institute of Government which is a part of the University of North Carolina, publishes a handbook entitled Primary and General Election Law and Procedure, and one is published every two years and distributed to the local—to the different County Boards of Elections.

And I distributed one of these books to every Registrar and also to every judge along with a copy of a [132] compilation of all of the statutes pertaining to election laws in North Carolina. This handbook is in—well, it explains, you might say, in layman's language. It states the essence of the statutes. But every Registrar and judge has one of these two things.

MR. SCHWELB: I would like to, subject to the Court's prior ruling—I would like to introduce that into evidence, the book that is in his hand, I am familiar with it, and make that a Government's—defendant's exhibit.

MR. STOTT: I have no objection. I would be glad to number it as a plaintiff's exhibit now and introduce it at this time.

MR. SCHWELB: I have no objection to that, that proceeding.

JUDGE WRIGHT: Let it be admitted after it is numbered. Proceed to something else.

BY MR. SCHWELB:

Q. Now, when you considered bringing this suit, Mr. Hollowell, you were aware that the—were you not—that Negroes had had an inferior educational opportunity in Gaston County to white people?

[133] MR. STOTT: I object to that.

JUDGE WRIGHT: Well, don't state it in a conclusionary form.

BY MR. SCHWELB:

Q. Well, did you know the schools had been segregated during most of the lifetimes— A. Not since the time I have been on the Board of Elections. They were desegregated, I believe—I don't know the exact date but it's been several years.

Q. During the lifetimes of most of the present adult voters? A. Yes, sir, I went to segregated schools and I think that—I mean, to my knowledge the schools were segregated up to several years ago.

Q. How old are you, Mr. Hollowell? A. Twenty-nine.

Q. And you finished school in what year? A. Which school?

Q. Whichever segregated school you went to? A. I finished Gastonia High School in 1955.

Q. It was segregated then? A. Yes.

Q. And for several years thereafter? [134] A. Yes, sir, but I am not sure how long after. I think in the early 60's we desegregated, but I am not sure.

Q. You didn't at that time make any study of the history of the educational opportunity as between Negroes and whites, did you? A. No, sir.

Q. So you made no direct study as to whether through educational discrimination it might have become part of the Negroes and white persons to pass a literacy test?

MR. STOTT: Object to that.

JUDGE WRIGHT: This testimony will be taken subject to your general objection, just as we took the same or similar testimony from the last witness.

BY MR. SCHWELB:

Q. * * * * * —you didn't investigate the question of equal education? A. No, sir, I can't personally testify to anything concerning that. I don't know.

Q. Have you made some investigation since that time? A. Well, no, sir. I really have no—I have seen some figures

that you have given to Mr. Stott, but I have not read all of them and I haven't studied them. I have just [135] seen them.

Q. Now, you mentioned that there were no Negroes at your school. Would that be true also with respect to churches, clubs, social gatherings, and other activities of people in Gaston County, primarily the white people have theirs and the Negro people have theirs? A. Well, now, I can't testify as to what other individuals did in their social life. I have been to meetings, many meetings, with members of both races present. I have participated in athletics in Gastonia, not under school athletics, but with Negro citizens on playgrounds, etc. But other than my personal association—my church is not integrated or was not during my high school or student days.

Q. When you are referring— A. I don't know how to answer your question.

Q. When you are referring to meetings that you have been to, you are talking about official meetings of some kind, is that not true? A. Well, I can't really recall the meetings, but I know [136] I have met with Negro girls and boys.

Q. Well, let me ask you this. Are you familiar with the general custom of persons, whom they have for dinner, for example, at their homes?

MR. STOTT: I didn't hear the last question.

MR. SCHWELB: Is he familiar with the general custom as to whether Negroes and whites visit each other in their homes?

MR. STOTT: My general objection to this question would would be sufficient.

JUDGE WRIGHT: Yes.

THE WITNESS: Should I answer it?

JUDGE WRIGHT: Yes.

THE WITNESS: I don't know what you mean by custom. I don't know if I can answer you.

BY MR. SCHWELB:

Q. Have you had Negro families to your home for dinner? A. For dinner?

Q. Yes, sir. A. I don't think I have, sir.

Q. Now, in general, if you know, do the Negroes hold a lower—are they in a lower economic position than the white people in Gaston County, in general [137] A. I don't know.

Q. Are most of the officers in the county white? A. Of the county officials?

Q. Yes. A. Yes, sir, I think so.

Q. Are most of the owners of the major businesses in the county white? A. I think so.

Q. You are an attorney? A. Yes, sir.

Q. Mr. Ramseur is a Negro attorney? A. Yes, sir.

Q. Is he the only one that you know of in the county? A. He is the only one in our county, yes, sir.

Q. You don't have any personal doubt, do you, that the per capita income among Negroes is substantially lower than the per capita income among white people? A. Well, I think the only way I can answer that is to say that among the professional men in our community that I have no doubt that the majority of the professions are composed of white persons, but I certainly—in our county, Mr. Schwelb, our county is composed of textile mills and there are many, many white people that have a very low per capita income.

[138] But in the professions and in the higher offices of our county—and I would also truthfully say that in the major businesses—that most of the persons occupying these positions are white.

But I don't know that I could agree, or at least I can't say whether or not the per capita income as a whole is lower for one race than another because of the way our county is composed.

Q. Now, let me ask you something about the way your county is organized. Is it true that approximately half the population is in the city of Gastonia and approximately half outside? If you know. A. Gastonia is the largest city in our county, I am sure, by a great margin, but I have never seen the figures although I know—

Q. Whatever the Census shows would be true? A. Whatever the Census shows would be true, as far as the best of my knowledge.

Q. Now, * * * * * Would you say that Negroes in general, the prominent Negroes in the county, are centered in Gastonia? [139] Those who hold well-paying and responsible jobs in the community? A. Well, most that I am acquainted with are because that is where I live, but I don't know about other communities as I do Gastonia. But we have some very outstanding Negro men in our community that hold high elective offices, city council and other areas, school board, elected officials to our county–city school board.

Q. You are talking about Gastonia now? A. Yes.

Q. Excuse me. A. Our Gastonia City Council has had a Negro councilman. There are only I think five in the city. We have had one for ten years. We have an elected official to the City Board of Education. There is not–I don't know how many members. But generally speaking it is composed of white people.

Q. Well, now you have mentioned that there has been a city council member traditionally, or for several years, a Negro city council member in Gastonia. Do you know of any similar position that a Negro holds, say, in Cherryville? [140] A. I am not familiar with any elected official in the town of Cherryville. I have heard the mayor's name, but I couldn't really tell you.

Q. Well– A. As far as I know there are not, I would say.

Q. You don't know of any Negro elected officers in any part of the county besides Gastonia? A. No, sir, I do not.

Q. Mrs. Saunders you mentioned is the Negro Registrar who was appointed by the Board. That was in Gastonia, wasn't it? A. Yes.

Q. There have been no Negro Registrars outside? A. Not under my–no regular Negro Registrars other than Mrs. Saunders, that is correct.

Q. Now, as a matter of general community knowledge, is it true that the Ku Klux Klan is believed to be active in some of the areas of your county other than Gastonia?

MR. STOTT: Objection.

MR. SCHWELB: If you know.

JUDGE WRIGHT: This is part of the same general objection.

THE WITNESS: Mr. Schwelb, I read in the newspaper [141] several years ago that there had been some type of Ku Klux Klan meeting in Cherryville. I have never heard of it in Gastonia or any other part of our county and I have never heard anything since that time. I don't know of any demonstrations or any violence or anything, to my knowledge.

Q. You never heard about a school in the county that was visited by robed Klansmen in the last two years? A. No, sir, I have not.

Q. Have you heard about any threats or reprisals against any Negroes in any part of the county who sent their children to desegregated schools? A. Absolutely not. I have not heard that.

Q. You don't know that it didn't happen? A. No, I don't, but I have never heard it.

Q. Now, mentioning Cherryville, I think you are aware of a voting problem with respect to Negroes that did exist there prior to the last five years, aren't you? A. I know—

MR. STOTT: Excuse me. I was objecting, but I just sort of forget about it on occasion.

JUDGE WRIGHT: All right. You may answer.

THE WITNESS: I know what you talked with me about. [142] I know of no other personal knowledge other than what you have told me yourself, and that was I think back in 1940 that you said that.

BY MR. SCHWELB:

Q. Are you testifying I told you something happened in 1940? A. Yes, sir. In Cherryville, that there was trouble. I heard you discuss it. That is the only knowledge that I have.

Q. Well— A. Or Miss Gallagher possibly did.

Q. Am I wrong in believing that your father was involved in correcting a situation that existed in Cherryville? A. That is what you told me and I have never discussed with my father but my father was chairman of the Board of Elections at the time and I understand from you that there was some problem and my father went up and corrected it so that it did not exist any longer. That is the extent of my knowledge.

Q. You are saying "you" generically, aren't you? You don't mean me personally? A. This is what you or Miss Gallagher told me and that is the only knowledge I have.

Q. Now, Mr. Hollowell, when this suit was brought on [143] behalf of Gaston County, I think it has been testified that you have no direct connection with the city registration in the different municipalities in this county. A. We have no jurisdiction concerning registration or voting in any municipality in our county.

Q. Did you take the opportunity to talk to the Registrars of any of these municipalities prior to bringing this suit? A. No, sir. I have nothing to do with them, and I don't—I haven't talked with them personally about this law suit. We have some Registrars that are common to the county and the various cities, so I have talked with them but in the sense of our county.

Q. You didn't make any efforts, did you, to determine what the practices were of these different city Registrars? A. Well, I have not lately. I am registered in Gastonia. I know what they were when I registered, but I did not check about this law suit about any municipal election.

Q. You don't know whether they consider themselves subject to the Voting Rights Act? A. I don't know.

Q. You don't know whether they comply with the Voting Rights Act, do you? [144] A. To the best—I don't know. I just don't know. I just have to be honest with you. I have not checked. To my knowledge I have an opinion, but I don't know that that is qualified.

Q. Limiting yourself to your knowledge rather than your opinion also, you have no personal knowledge as to whether

they are discriminating on the grounds of race, do you? A. I have no knowledge about city election—I have never heard of it from any person anywhere and that is all I can say.

Q. You don't even know if the city Registrars want to come out from under the Act, do you? A. I do not.

Q. But if you win this law suit, they will come out from under the Act. A. I do not—

MR. STOTT: Objection.

THE WITNESS: —know.

JUDGE WRIGHT: I sustain the objection. That is a matter of law, I take it.

MR. SCHWELB: Yes, Your Honor. Of course, I feel more free with this witness than [145] some other perhaps.

BY MR. SCHWELB:

Q. Now, I think you testified that you had received no complaint from any person about racial discrimination. A. That is correct.

Q. Now, of course, the fact that you received no complaint doesn't mean that there was no discrimination. You are not contending that?

MR. STOTT: I object to that.

JUDGE WRIGHT: I sustain the objection. It is argumentative.

BY MR. SCHWELB:

Q. Well, you don't deny the possibility of there having been somebody who felt wronged who didn't communicate it to you directly—

MR. STOTT: Objection.

JUDGE WRIGHT: I sustain the objection. It is argumentative. He says he doesn't know about it. He can't account for everybody in the world. He says he doesn't know about it.

MR. SCHWELB: Well—

JUDGE WRIGHT: Or in Gaston County.

BY MR. SCHWELB:

[146] Q. Prior to the institution of this suit did you know of or anything about John Patterson? A. Never had heard his name.

Q. Did you know anything about a Frank Miller having allegedly been turned down for registration? A. No, sir, I did not.

Q. Did you know—have you ever heard of Thornton Stringfellow? A. No, sir.

Q. You didn't— A. Not before this suit.

Q. You didn't know anything about his having been turned down for registration? A. No, sir.

Q. And the same is true for Mrs. Burch? A. That is correct.

Q. And Mrs. Hyde? A. That is correct.

Q. And Mr. Rice? A. I have never heard of any of them.

Q. Well, prior to the institution of this suit did you know about the case of Charles Clark, the white man who was—well, you know who he is now, don't you? [147] A. Generally, but I had never heard of him before this suit was instituted. I am not sure that I know now.

Q. You didn't know the facts related by the witnesses for the Government in the first thirty depositions that— A. I was not present and have not read them.

Q. You certainly didn't know of the contents prior to the institution of this suit?

MR. STOTT: Objection.

THE WITNESS: You mean the contents of the depositions?

BY MR. SCHWELB:

Q. Those that you have read. A. Well, the depositions weren't taken until after the suit was—

JUDGE WRIGHT: Just a minute, please. He has testified several times he doesn't know anything at all about any of the people involved in the depositions until this suit was filed. That is what I understand his testimony to be.

MR. SCHWELB: Well, I am referring now not to the Negro complainants, Your Honor, but the white illiterates or the whites who are alleged to have been illiterate. I hadn't thought he testified about that.

JUDGE WRIGHT: Weren't these the white deponents [148] whose names you have been giving him and he has been saying that he didn't know anything about?

MR. SCHWELB: I gave him only one.

JUDGE WRIGHT: Well, proceed. Maybe I misunderstood.

MR. SCHWELB: All right.

BY MR. SCHWELB:

Q. Now, let me ask you something—changing the topic for a moment, Mr. Hollowell—these statistics that you testified to in your direct examination, how were they derived? A. Well, some are the ones—I think I identified I got some from a special census report of the Department of Commerce.

Q. I mean the registration figures. Excuse me for interrupting—that is what I was referring to. A. I did not physically count these, but I requested that the executive secretary of our Board of Elections compute these figures as to the number of persons voting and registered. Now I got the figures as to the number that actually voted from the returns that the County Board officially made as to the votes cast in the election, but as to the registrations, they were computed by the executive secretary of our Election Board at my request. [149] And I might add that the county—well, you didn't ask me that.

Q. Well, let me ask you this. How can you determine now how many people were registered in 1962? How are the records kept that enable you to do that? A. Well, sir, each registration card has a date as to the registration, but Gaston County in 1962 installed an IBM system and an IBM card was made for each registration card.

And this IBM equipment and cards are not maintained by my office. They are maintained by the county for jury lists and other information that they need.

And when we get a registration we photocopy or send a copy of the registration card to—across the street to the court house or someone from the court house would come over and pick up from us periodically.

They make an IBM card for each registration and then they return the registration slip to us. That is just a copy of the registration slip. The original remains in our office.

And I think that this is the way it is computed because I am sure it would have been impossible—well, relatively impossible to compute all these figures or count [150] them personally.

Q. When somebody moves or dies, is there some adjustment made on the IBM system? A. No, now I have no knowledge of the IBM system. I don't maintain it and I don't know what they do. But I can say that our books are continually purged because the Register of Deeds of our county sends us a certified copy of a death certificate when they receive it. We remove that registration and the Clerk of Superior Court certifies to us a record of all the convicted felons at the end of each term of court if it is a final conviction and we notify that individual that we are going to remove his name. But I do not know if the IBM card would change because we do not notify the county of these type changes, because this is done for the county's—

Q. Well, perhaps you are not qualified to answer this, but on a number of the—at least one entry on one of those lists that you gave, the same number appeared for one year as for the following year. A. That is correct.

Q. Now, is it your impression that that—strike that, please. That doesn't mean to you that nobody registered in [151] that year, does it? A. Well, I think that these registration cards are kept pretty accurately, although I—they are not under my supervision.

But I notice that between November of '64 and November of '65 that period did not change. There was no election in our county and there is very little interest in registration except when an election is pending. That is the only explanation that I can give. But this figure as far as I know is accurate. That is what was—

Q. Well, there could have been 200 people register and 200 people die, couldn't there, or move? That is— A. Yes, sir, that is true, they could have.

Q. It doesn't show the number of new registrants during the year? It just shows the number of new registrants as compared with the number of people who have moved or died? A. I don't follow you.

Q. Well, if you have—supposing you have 15,000 in 1963 and 16,000 in 1964. You could have had 1,000 registered, new registrants and nobody died, or you could have 2,000 registered and 1,000 died or moved, isn't that correct? A. Yes, sir, that is true. This is a compilation of [152] the registration and I didn't attempt to—

Q. To the best of your knowledge that takes into consideration the purges for dying and moving? A. These figures that I gave you?

Q. Yes. A. In my opinion it probably does not take into account the ones that have moved—it is a reflection of the number of people that registered with our county board.

JUDGE WRIGHT: I think you are talking about the same thing. This is a current figure, as I understand it, of the number of persons registered, so any current figure would have to take cognizance of the fact that some have been purged for death removal or otherwise and others have been registered.

MR. SCHWELB: No, Your Honor, I am referring to a different figure now. I am referring to a sheet of paper that he gave with five different figures on it. 1962, so and so; 1963, so and so; 1964, so and so; and 1965, so and so many. Now what I am driving at is this. Supposing in 1963 the list was given at 15,000 and in 1964 the list was given at 16,000, one particular race. But that doesn't necessarily mean that nobody [153] registered in between. That is—

JUDGE WRIGHT: I think it is clear that the figure is a current figure and even though the figure itself may not change by some fortuity, the actual people who registered may change.

MR. SCHWELB: That's right.

BY MR. SCHWELB:

Q. Well, let me ask you this, Mr. Hollowell. These were computed in the last week or two at your—. A. At my request.

Q. At your request? A. Yes, sir.

Q. They were not computed—you don't have available figures for 1962, for example, computed at that time, do you? A. No, sir.

MR. SCHWELB: All right. May I have just a two-minute consultation?

JUDGE WRIGHT: Yes.

BY MR. SCHWELB:

Q. A question on these records, Mr. Hollowell. Do you know if there are a number of undated cards in the possession of your employees for the Board of Elections and if—well, do you know that? [154] A. You mean registration cards?

Q. Yes, sir. A. I have seen two because these were brought to my attention since this investigation. Those are the only two that I know of, two cards that had a registration, the person was registered, but the date of their application was not indicated on the card, for what reason I do not know.

Q. How did you determine what totals they were to be included in? A. I do not know if those two were included in any totals. I have no knowledge of whether they were or were not. I assume they were not.

Q. You don't know whether those two are the only ones, do you? A. The only ones that I know about.

Q. Let me ask you this. With respect to the registration in Cherryville and the problem that you said you heard from me and Miss Gallagher, did you make any additional investigation in connection with that? A. No, sir. It happened in '40, 1940, and we had no [155] problems, so I haven't.

Q. Well, you are not suggesting that Miss Gallagher or I told you that there had been no problem of any kind in Cherryville since 1940? A. No, sir, I am not. This is—the only thing that you told me was in, I believe, 1940 or thereabouts. But that is the only thing you told me about any trouble.

Q. Well, you now know that there is testimony in this record about Cherryville, dealing with 1962 and 1966, don't

you? A. I don't know. I know it maybe in a general sense because I have heard you or Miss Gallagher discuss it with Mr. Stott, but I don't know of any names or any individuals. It seems like you said something about Cherryville, but that is all I know.

Q. Anything I told you would be hearsay, wouldn't it? A. Yes, sir.

Q. You have left it in the discretion of the Registrars as to whether or not to visit people in their homes, have you not? A. Yes, sir. I have told them that that is permissible [156] and I have told them if they wanted to that it would be perfectly all right, yes. We felt that they would probably do that if we paid them $.50 a name. That is the reason that we wanted to, to encourage them to get people on the books.

Q. By the way you testified that each—that you had no rejected forms at all for the post 1964 period, isn't that true?

JUDGE ROBINSON: For what period?

MR. SCHWELB: The post 1964 period. That is the period when the written test was in force.

THE WITNESS: I have received no rejected forms from anyone and I have no knowledge of anyone being rejected because of failure to pass a written test that was attempted to be written.

BY MR. SCHWELB:

Q. Do you know of testimony in the record that some people actually were—or one or more people were rejected and that these forms have not been retained? A. I know I have heard that there is testimony in the record that persons were rejected, but none of the testimony to my knowledge indicated that they actually tried to write something down on a piece of paper. [157] I think that what I know about it is that they just said they could not read and write and didn't attempt to do it on this paper so—

Q. In those situations you didn't retain the name of the rejected applicant, is that true? A. No, sir, because he didn't try to write anything and there was nothing written

for him. He wouldn't take the test and there was nothing to keep as far as I know.

Q. Well, the Registrar was not under instructions to learn who such a person was and write his name down? A. The Registrars—I instructed them if anyone objected because they could not write this test and they attempted to take the test, they must preserve all written documents. But I did not tell them to report to me the names of anyone they rejected because they were rejected properly in my—

Q. So those names are not available for whatever reason? A. No, sir. If anyone had appealed we would have known it—complained about it, but—

Q. Nobody did appeal as far as you know? A. No, sir.

[158] MR. SCHWELB: I have no further questions.

MR. STOTT: We have no further questions, Your Honors.

JUDGE ROBINSON: I have one question.

JUDGE WRIGHT: Go ahead.

JUDGE ROBINSON: Mr. Hollowell, I understand that after the 1964 Civil Rights Act went into effect, Gaston County did change from what essentially was an oral testing to a written testing, is that correct?

THE WITNESS: That is correct.

JUDGE ROBINSON: Can you tell me as precisely as you can just about when it was that that switch was made, that change was made?

THE WITNESS: I think it was in September of 1966—

JUDGE ROBINSON: Very well.

THE WITNESS: —that we learned that we were under the Act—I mean we learned of the passage of the '64 Act and were able to know what—

JUDGE ROBINSON: September of 1966?

THE WITNESS: No, '64. Excuse me.

JUDGE ROBINSON: Very well.

THE WITNESS: The '64 Act. I think it was passed in July and I think we may have heard about it; but we didn't know what the Act said.

[159] JUDGE ROBINSON: Thank you.

THE WITNESS: Until that time.

JUDGE WRIGHT: You have testified as to the Negro and the white population in Gaston County of voting age. Did you indicate that those figures came from a census?

THE WITNESS: Yes, sir, a special census was conducted in Gaston County by the Department of Commerce.

JUDGE WRIGHT: Is that document offered in evidence? May we have it?

MR. STOTT: It hasn't Your Honor, but we will by happy to mark it now. Plaintiff's Exhibit No. GG.

THE DEPUTY CLERK: Plaintiff's Exhibits Nos. FF and GG for identification.

(Plaintiff's Exhibits Nos. FF and GG marked for identification.)

MR. STOTT: Well, I offer it into evidence at this time.

JUDGE GASCH: Is that the document on the basis of which the witness testified that 52 percent of the Negroes over age 21 were registered, but less than half of the white population over 21?

MR. STOTT: That is the document, Your Honor.

* * * * *

[160] JUDGE WRIGHT: Well, I didn't have those figures—

THE WITNESS: I didn't—I don't know the percentage of white persons. I did not compute it, but I had the figures.

JUDGE WRIGHT: Does the document show the number of people registered to vote in Gaston County?

MR. STOTT: It does not show that, Your Honor. But this shows the number of voting age of whites and Negroes, that is, over 21.

JUDGE WRIGHT: And the registration figures that you gave came from your own records, is that right, Mr. Hollowell?

THE WITNESS: Yes.

MR. STOTT: I offer—

JUDGE WRIGHT: No objection. Let it be admitted.

MR. STOTT: Plaintiff's GG and Plaintiff's Exhibit FF, I believe we admitted that.

(Plaintiff's Exhibits No. GG admitted in evidence.)

JUDGE ROBINSON: To make certain I am clear, my notes indicate that the 52 percent figure that you gave us was a product of your own computation, is that correct?

THE WITNESS: Yes, sir. I—

[161] JUDGE ROBINSON: Based on the figures to which you testified.

THE WITNESS: Based on the figures. I computed that myself and it was right at 52 percent. I could be in error.

JUDGE WRIGHT: Thank you very much, Mr. Hollowell.

MR. SCHWELB: Could I ask one question in connection with the census figures?

JUDGE WRIGHT: Yes.

BY MR. SCHWELB:

Q. Mr. Hollowell, it is generally known, isn't it, in Gaston County, and this is determinable later by the fact, that more than 60 percent of the whites are registered, aren't they? A. I could compute it because I have the number registered according to the number that are of voting age, but I do not know that it is 60 percent. I mentioned a 60 percent figure—no, I didn't.

Q. Well— A. It could be computed but I have not done it.

Q. We can—I think evidence can be adduced on that.

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[162] TESTIMONY OF CLEVELAND FLOYD

* * * * *

DIRECT EXAMINATION

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BY MR. STOTT:

Q. Would you please state your name for the record? A. Cleveland Floyd.

Q. Would you speak up just a little? A. Cleveland Floyd.

Q. Your race is Negro, is that correct? A. That's right.

Q. What is your occupation or profession? A. I am a dentist.

[163] Q. Where do you practice dentristry? A. In Gastonia, North Carolina.

Q. How long have you lived in Gaston County? A. How long have I lived in Gaston County? Well, I was born and reared in Gaston County.

Q. How long has that been that you have lived in Gaston County? How long? A. Well—

JUGE WRIGHT: How old are you?

THE WITNESS: I am 44.

BY MR. STOTT:

Q. All right. In your practice of dentistry do you have any patients among the white people? A. Oh, sure.

Q. Would you state what percentage— A. I would say—

Q. No, wait just a minute. Would you please state what percentage of your patients are white people? A. About 45 percent.

Q. And the remaining 55 percent— A. 55—

[164] Q. Is Negro? A. Yes.

Q. Have you been active in the—in regard to registration of citizens in our county? A. Yes, I have.

Q. Do you recall back in 1962 when the new system of registration was put into effect in Gaston County? A. Yes.

Q. At that time did you have any or take any part in assisting or encouraging people to register under the new system? A. Yes.

Q. Prior to—well, in 1962, and prior to that date, had you served on any committees of any type or commissions that had to do with registration, an encouragement of citizens to register to vote? A. Yes, prior to that, I think beginning, well, early in 1953, but more specifically in 1957 I headed what we call the Gaston's Citizen's Committee as president and I served from 1957 through 1963 as its president. And this organization was born more or less out of what we called at that time political necessity, that was entering into the political arena and encouraging people to vote, seeking out the issues and what not.

[165] Q. Was part of the work of this Gaston County Citizen's Committee to encourage people to register also? A. Yes, very much so. That was the integral part of it.

Q. Now, Mr. Floyd, are you familiar with or do you know whether or not Negroes have been elected to public office in the City of Gastonia? A. Yes.

Q. Do you recall when the first Negro was elected to public office in the City of Gastonia? A. In 1953.

Q. What was the name of that person? A. Nathaniel Barber.

Q. Do you know approximately how long he served in that capacity? A. He served three terms, six years.

Q. Do you know whether he was succeeded by a Negro? A. Yes, sir.

Q. Was he? A. Yes, he was.

Q. Who succeeded him? A. James Q. Falls.

Q. How long did Mr. Falls serve on the City Council of Gastonia? [166] A. I believe it was two terms, about four years.

Q. Do you know who succeeded him? A. Yes.

Q. Who? A. Thebaud Jeffers.

Q. Mr. Jeffers is a Negro? A. He is a Negro also.

Q. Do you know whether or not Mr. Jeffers if presently serving on the City Council of Gastonia? A. He is, recently reelected, past May.

Q. This past May? A. This past May.

Q. Now, are you familiar or do you know whether or not a committee or a commission was appointed by the mayor of Gastonia called the Human Relations Committee, Doctor Floyd? A. Yes, I do.

Q. Do you recall about when that Committee was formed? A. That was in the fall of '61.

Q. State whether or not you served on that committee? A. Yes, sir, I did.

Q. What work or what did this Human Relations Committee do in 1961 in Gastonia? A. Well, our initial phase of it was during the time [167] of the sit-ins that had just occurred throughout the country in '60 and we worked mainly on the lunch counters and restaurants in the downtown area.

Q. Explain what you mean by "worked on," please. A. Well, the matters of securing service on equal basis between the races.

Q. Well, what developed as a result of this work by this committee in regard to integration of lunch counters, restaurants and cafes? A. Well, first of all we had a preliminary meeting for organization and we had I think about half—it was about twelve—I think there were six Negroes and six white people on this committee.

And we selected a chairman and then we decided that we should go into the area of sit-downs because we had not had any disturbance right then or any sit-downs right then, and we decided we should get into it.

And we called in the proprietors of these various lunch counters and drug stores, chain stores, and what not, in our conferences.

And after several discussions it was decided that we would give it a try to desegregate the lunch counters.

This was to take place—we decided it would be [168] January 1, 1962, no later than that.

And of course we didn't meet any more formally. But on January 1, 1962—actually it was January 2 because—

Q. Well, on that date in January, 1962, were the lunch counters, the restaurants and cafes in the Gastonia area integrated? A. They were.

Q. Was it done voluntarily by the people? A. It was done voluntarily.

Q. The owners? A. It was done voluntarily.

Q. Now, did you belong to any other groups in the city of Gastonia or in the County of Gaston? A. Well—

Q. Any other committees? If so, I would like for you to state them. A. Well, yes.

Q. Will you state what some of them were, Mr. Floyd? A. You mean at that time?

Q. Yes. A. Well, I was a member of the Human Relations Committee, of course. [169] I was also—to go back—president of the Citizen's Committee because it was a very important part of this; March of Dimes campaign; the Can-

cer Society. Of course, since then there have been a number of others.

Q. All right. Back at the time of the new registration in 1962, Doctor Floyd, did you take an active part at that time prior to April 21, 1962? A. Yes.

Q. In contacting the Negro people in particular in regard to registering to vote in Gaston county? A. Yes, we did. As I recall there was a conference that was set up by the Chairman of the Board of Elections.

Q. That was Mr. Davis? A. Mr. Davis, that's right. And he invited all interested people and some people in particular, especially Registrars who were in the various parts of the county, for a conference to explain that the books had been purged and we were going through a new registration. And out of that came the setup wherein that they were going to register as many people as we possibly could at [170] specific times.

And, of course, there were times that were unusual in that we used to—before then, open the books up maybe for three or four weeks in advance of election, but this time we set up the books so that—set up the registration so that they were during the week days in the various precincts throughout the county, in the evening hours mostly, two to five in some places, three to seven things like this.

Q. Well— A. So after we found out that, well, our committee decided we needed to put on a special effort to get our people out to let them know that this is a new registration and in order to vote they had to get on the books.

We sent notices to the churches, especially the Negro churches, throughout the county.

By word of mouth we passed it as much as we could, wrote all the civic organizations.

We even had placards printed and placed around the various establishments in the Negro area.

I think on one instance we did have a sound truck for one afternoon we passed through the community.

And of course, this was also backed up by—at that particular time we did have a little section of our local news-

paper called The Negro News, and we pushed it through that [171] quite a bit.

This was just for getting the people to come to the polls and register.

Q. What, if anything, was done block by block– A. Oh–

Q. –to encourage this? A. Yes, block by block. This is something we always do, but we did this. We had block captains to see how many people they could get to come and register and vote. And then we had rechecks also, those that we knew that did not come up and register and vote, we had them to go back and try to follow through on it.

Q. During 1962, this registration period in 1962, do you know whether or not any of the Registrars went to various places in the community for the purpose of registering Negro voters or citizens? A. This is 1962?

Q. Yes. A. Yes. Yes. After we had exhausted the hours that were set up by Mr. Mack Davis, who was at that time the Chairman of the Board of Elections, we knew that we were still lacking in numbers of people on the books. [172] And we were able to get hold of our Registrar Mr. Charles Wilson at that time–

Q. Charles who? A. I mean Charles Miller.

Q. Miller? A. Charles Miller.

Q. Was he a white man or a Negro? A. He was a white man.

Q. All right. A. He was a white man. I think he was employed at First Union Bank at that time. He was a Registrar and he agreed to come over–well, first of all he agreed to accept or have any one come to his home and register after hours.

But this was not suitable because we weren't able to get enough people out to go to someone's home, so we set up a special registration.

And I do know of two night registrations. One was held at the Morelock Elk Lodge on North York Street, which was in the Negro section.

I don't recall how many we registered, but I do know [173] that we planned to work about two hours and we ended up working about three, maybe longer.

He had a few people assisting him but he did the registering himself.

And then at the Erwin Community Center, which was on North Pryor Street, which is probably six blocks over to the west in the Negro section we also had another night of the same type of registration.

This was special registration beyond the regular set-up.

Q. During this period of time in 1962, Doctor Floyd, was there any difficulty with the election officials of Gaston County cooperating with you and other leaders of the community in getting these people to register or having them to register? A. Well, I don't—.

MR. SCHWELB: I object to the form of that.

JUDGE WRIGHT: Suppose you limit it. Did you have any trouble with any of the people, leaders and the registration people, in getting people you wanted registered?

THE WITNESS: No.

* * * * *

[174] BY MR. STOTT:

Q. Well, after 1962, Doctor Floyd, did you continue to have an interest in the registration of voters and to encourage them to vote? A. Yes, we did.

Q. Would you state whether or not that continued through the year 1963? A. Yes, it continued. Every time the books were open we worked at it. However, you know, the books there are open every day at the election office, with the exception of some days they close up to get the books straightened out.

Q. Prior to election? A. Prior to election. Yes, we have done it.

Q. Now, directing your attention to the year 1964, before the May 1964 primary election and the general election in November, 1964, what, if anything, was done by you and by the election officials in Gaston County to assist in the registration of voters and particularly Negro voters, or Negro citizens? A. Let's see.

Q. In 1964. A. In 1964 we had primary and then we had a run-off, I [175] believe, yes. Well, at this run-off election between Mr. Pryor and Mr. Moore, I was at the Precinct Seven box. And—well, you had these run-off things and you wanted to get your people out—

Q. Well, all right, go ahead. A. And we were a little disappointed because we had a lot of people that weren't registered. And I was talking to the Chairman of Elections—

Q. Who was the Chairman at that time? A. Mr. Lin Hollowell.

Q. All right. A. And he said to me, he said, "Well, Doctor Floyd, at any time you want a special registration setup, you just let me know and I will arrange for it." And of course we didn't do anything about it right then but by the fall previous to the '64 election, general election we did.

Q. Now, Doctor Floyd, would you tell us what was done prior to the general election in November of 1964 to get Negroes particularly registered to vote in Gaston County? A. Well, we went through the same procedure, pushing the advertisement through the churches and what not, that we were [176] going to have special registrations, but this was after I talked to Mr. Hollowell and he said that whatever nights were suitable to us he would supply the Registrars to take care of them.

We would do the same procedure that we had been using for several years in getting people out, newspapers, placards, church announcements and things like that.

And we had our registrar, who is a Mrs. Morris at that time, come over and I think it was over—I am sure it was—it was at the home of Mrs. Blanco Drummond on North Fall Street, B-l-a-n-c-o, Drummond.

Q. Now, Doctor Floyd, Mrs. Robinson that you referred to—Mrs. Morrison, rather, excuse me—was a white woman? A. She is a white woman, yes.

Q. All right. Now, Blanco Drummond that you referred to, was he a Negro? A. He is a Negro, yes. As a matter of fact he is a presser, he is a presser in a dry cleaning fac-

tory—plant. And she brought along with her the chief Registrar of the county, Mrs. Query.

Mrs. Morrison registered people who lived in this precinct, Precinct Seven, and Mrs. Query, being the general [177] Registrar, the chief Registrar for the county, she registered people who just came by, regardless of where they lived in the county, because she could legally do this.

Q. Now, what time of day or night was it that Mrs. Morrison and Mrs. Query, the executive secretary, went to the home of Blanco Drummond in 1964? A. Eight o'clock.

Q. Now, you may proceed. A. Eight o'clock in the evening. That was one week. That was on Tuesday or Thursday, I don't remember which one.

Q. All right. A. Then the following week we went over to Mrs. Melinda Earl's home on Allison Street, which is about four or five blocks to the west in the Negro section.

Q. You say "we went." Doctor Floyd, could you tell us who you refer to? A. Mrs. Morrison, Mrs. Query. I was present and several other of the block workers that we usually use to help get out the vote.

Q. Would you identify who Melinda Earl is? A. Mrs. Melinda Earl is a Negro, lady of about 65.

Q. All right. Now what took place on this occasion at the home of [178] Mrs. Melinda Earl? A. We registered voters, registered voters. We did have one incident that occurred.

Q. Well, what was that incident that you refer to, Doctor Floyd? A. Matter of a man said he could read but he still couldn't read the oath.

Q. Was this a Negro man? A. Yes, he was a Negro man.

Q. What then occurred? A. Well, his reasoning was that he used to read but his eyes were bad, and, of course, he did not—

Q. What if anything was done to assist that Negro man in registering to vote? A. Well, Mrs. Query found a pair of glassses that belonged to someone, that he could see through. He read the oath and she registered him.

Q. Do you know or have an opinion as to approximately how many Negroes were registered at the home of Melinda Earl on that evening? A. It was 83.

Q. What, if anything, was done after that, Doctor Floyd, in 1964 to assist in the registration of voters? A. We moved over to Precinct Four, I believe. In other [179] words it is the East School Precinct, which is east of North Marietta Street in the North section of town.

Q. Now, would you tell us whom you refer to when you say "we"? A. Well, Mrs. Query, and of course that precinct has a different Registrar by the name of Mrs. Phillips, Mrs. Ida Phillips.

Q. All right, sir. A. There is a—well, this is really in the slum section—really slum.

Q. Well— A. And, of course, we went to this old—I don't remember the name of it, but it was a Good Will Center, that's what it was—years ago it was a Good Will Center, but it was still being used by the neighbors there.

And of course there were quite a few weeds around. We went up there and registered quite a few voters that night. In fact, I think we registered about 60.

Q. Was this area that you are talking about in a predominantly Negro area? A. Yes.

Q. Doctor Floyd. A. Strictly Negro area.

[180] Q. But Mrs. Query, you say, and Mrs. Phillips went— A. Mrs. Query and Mrs. Phillips, myself and—

Q. Now, would you relate to us other occasions, if any, that steps were taken by you and the executive secretary of the Gaston County Board of Elections to assist in the registration of voters? A. Well, we did have—I didn't go on this trip, but we did have Mrs. Query to go out in the Firestone section.

Q. Is this—

MR. SCHWELB: Excuse me, Your Honors, I would like to object if he doesn't know it of his own knowledge.

JUDGE WRIGHT: Well, at this time you were acting as what, head of a committee?

THE WITNESS: Yes. I was the head of it. I directed it. I helped set it up.

JUDGE WRIGHT: As a result of your action in connection with this–

THE WITNESS: That's right.

JUDGE WRIGHT: –this was arranged?

THE WITNESS: That's right. It was action as a result of–

JUDGE WRIGHT: I overrule the objection. You can't testify what took place at the place, but at least that the [181] incident took place.

THE WITNESS: All right. The incident did take place.

BY MR. STOTT:

Q. I beg your pardon? A. The incident did take place.

Q. You say you did not go to the Firestone area? A. No, I didn't.

Q. With Mrs. Query. A. No.

Q. Do you know whether or not any people or any Negroes were registered after Mrs. Query went to the area which you refer to as the Firestone area? A. Well, I learned that there were 30 people registered out there, approximately 30 people.

Q. Do you know of any other times that this type of procedure was followed, Doctor Floyd? A. We had it once more at the Erwin Park Center.

Q. The Erwin Park Center? A. That's right. Erwin Community Center.

Q. All right. Now, who was there on that occasion to assist in the registration of voters? [182] A. Mrs. Query and Mrs. Morrison.

Q. Do you recall how many or approximately how many were registered on that occasion? A. There were about 15.

Q. Doctor Floyd, we have introduced into evidence a plaintiff's Exhibit E which is a film, 8 mm I believe; was that taken by you? A. Yes, it was.

* */* * *

Q. Doctor Floyd, can you identify this plaintiff's Exhibit E? A. Yes. This is a film of a–or a film that I took of 8 mm–my own 8 mm camera and on this whole film–of course, there is a lot of family interest shots and what not–

but there is a section of the registration process that we procedures we carried on at the Morelock Elk's Lodge in 1962.

* * * * *

A. It is towards the end of the film.

[183] MR. STOTT: Your Honors, as I recall I introduced all of these exhibits identified this morhing without objection.

JUDGE WRIGHT: That is correct.

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MR. SCHWELB: Mr. Stott, I consented only to the newpapers and related publicity, but I don't have any objection to the film. But I understood my stipulation to relate only to the publicity material you had shown us previously, the newspapers, plus that one notice from that women's organization.

MR. STOTT: I was under the impression that it was the letters that were identified by Mr. Hollowell and Mr. Davis.

MR. SCHWELB: That is true.

MR. STOTT: That includes it all.

* * * * *

BY MR. STOTT:

Q. Are you familiar with a ladies' organization called the Delta Sigma Theta sorority? A. Yes, I am.

Q. Do you know what that organization is or what it does? A. Well, normally they do—well, it's one of these [184] national scholarship sororities.

Q. All right. A. But in respect to this voting, they have taken an interest in the last three or four years in registering people to vote. And on two occasions I know of recently they have attempted and they have been successful in getting people on the registration books.

Q. Now, at the time in 1962 that you were actively engaged in assisting and encouraging registration and also in 1964 when you actively engaged and encouraged and assisted people to register, did you see or do you know of anyone, any Negro who was refused the right to register simply because he was a Negro. A. No.

Q. Or for any other reason, Doctor Floyd?

MR. SCHWELB: Objection to that last question.

JUDGE WRIGHT: Well, the question as I understand it is limited to what this particular witness saw himself.

MR. SCHWELB: Yes.

JUDGE WRIGHT: Do you understand that?

THE WITNESS: I understand that.

JUDGE WRIGHT: Your testimony is that you did not see [185] any Negro be refused registration because he was a Negro?

THE WITNESS: No.

JUDGE WRIGHT: Is that right?

THE WITNESS: That's right.

* * * * *

MR. SCHWELB: I have an objection. My other objection would be that it is a matter of judgment, matter of opinion. That was the basis for the objection and not just hearsay.

JUDGE WRIGHT: Well, we will consider the source and let him give his opinion.

MR. SCHWELB: All right.

JUDGE WRIGHT: Now, to the next part of the question, did you see a Negro refused registration for any reason?

THE WITNESS: Well, I saw one that—I don't know whether he was eventually registered or not, but I know Registrar was concerned. He thought there was a matter of reasonable doubt, I suppose.

JUDGE WRIGHT: Reasonable doubt about what?

THE WITNESS: About him reading the oath.

BY MR. STOTT:

Q. Now, Doctor Floyd, would you relate to the Court what [186] that incident was and what—

* * * * *

Q. —and where it was and when. A. Actually this was a lady. This happened at the regular polling place, Firestation Number 2. It was on Saturday afternoon. This lady said she could read but she just couldn't quite make out the oath, and Mr. Miller—I had, at that time—it was the day

that I was re-registering also—and, of course, I was on my way out.

And they said, "Look, Doctor," they said, "will you take this lady over here and try to familiarize her with this oath and when you feel that she has memorized it to the extent that she might be able to pass it, you let her come back to me and I will take care of her right away." Well, I spent quite a bit of time with her. I felt like she ought to be all right and I carried her back. But now as to whether or not she was registered, I can't say because I left shortly thereafter.

Q. But you did attempt to assist her and the Registrar? A. I attempted to assist, I did, yes.

Q. All right. Do you know of any complaints or did you have any [187] complaints made to you by any Negroes that they had been refused the right to register because of his race? A. No.

Q. Doctor Floyd, prior to the institution of this suit by Gaston County, did you have a conversation with Mr. Hollowell about this, or did Mr. Hollowell talk to you about whether there had been discrimination in your opinion in Gaston County in regard to registration to vote? A. Yes, yes, we did.

Q. Now would you relate to the Court what that conversation was betwen you and Mr. Hollowell and what Mr. Hollowell said to you? A. This was—I don't remember the date—but this was right after we had been placed under the 1965 Voters—Civil Rights Voters Act, and he was concerned about whether or not there was discrimination in the county.

And I told him that I hadn't heard of anything but I didn't know it sure because I didn't know what had happened all over the county, but I would contact the various people that I knew that were active in the voter registration and voting throughout the county and see what they had to note.

We did this and after about two or three weeks here and there trying to find out I talked to him again, and he asked

[188] me, one, if we could set up a conference with most of these people, and we could, because he wanted to discuss it.

We set this conference up. It was about six o'clock in the afternoon—no, it was five o'clock in the afternoon at the court house in the County Commissioner's office, room. And the entire Board, I believe, was there.

Q. You mean the Election Board? A. The Election Board, Mr. Hollowell, Mr. Pruitt and Joe Davis?

Q. Brown. A. Joe Brown. They were there. The publisher of our local newspaper, James Atkins, a minister, Reverend Honeycutt was there, and there were several others. Ralph Jenkins, president of—principal of Pleasant Ridge Elementary School. And there were several other people there.

And we just had—first of all, Mr. Hollowell explained to us what had happened and why we were under the 1965 Civil Rights Voters Act, and his primary concern at that time was did we know of anybody being discriminated against on account of their race.

And, of course, we had not learned of anything. But we still decided that we should look further.

[189] One thing that he did state though, that if there was a matter of discrimination he wanted to know about it, because it had not occurred to him or had not reached his ears and I think we spent maybe a month or two still looking for the same type of thing.

Q. Now, Doctor Floyd, after you had inquired and made an investigation of your own, did you find that there had been any discrimination or did you find any evidence of discrimination?

MR. SCHWELB: I object.

JUDGE WRIGHT: I sustain the objection. It would be all hearsay.

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JUDGE GASCH: One moment, please.

JUDGE WRIGHT: We will take it subject to the objection. We will let him testify subject to the objection.

* * * * *

Would you please read that question back to the witness?

(Whereupon the following was read by the reporter:)

"Q. Now, Doctor Floyd, after you had inquired [190] and made an investigation of your own, did you find that there had been any discrimination or did you find any evidence of discrimination?"

THE WITNESS: I didn't—

BY MR. STOTT:

Q. Pardon me. You may answer. A. I did not. I didn't hear of it.

JUDGE ROBINSON: I am sorry. I didn't get the latter part of his statement.

(Whereupon the last answer was read by the reporter.)

MR. SCHWELB: Excuse me. I did not get that.

THE WITNESS: I did not. I did not hear of it.

BY MR. STOTT:

Q. Now, during this period of time after you had this first meeting with Mr. Hollowell, did anyone make any complaint to you or state to you that he or she had been denied the right to register because of race or color? A. No.

* * * * *

JUDGE WRIGHT: All right. Thank you. Your witness, Mr. Schwelb.

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[191] CROSS-EXAMINATION

BY MR. SCHWELB:

Q. Doctor Floyd, you testified about some drives in the City of Gastonia, did you not— A. Yes, I did.

Q. —to register the voters. Basically in Precincts Seven and Eight, I believe, in Gastonia? A. In what, now?

Q. In Precincts Seven and Eight, I think. A. Seven and Eight, well, Seven, I don't remember the one that's in East School. I remember the number of it, I suppose it is Eight.

Q. Now, just to make this clear, these drives resulted from conversations in which you requested that Negro voting be made easier in Gastonia? A. I wouldn't say easier. I would say be made more convenient.

Q. Well, I mean it was at your initiative, your group's initiative largely. You asked the Board of Elections to do

this didn't you? A. Yes, I did, but it was—at the same time it was—I was made aware of the fact that it would be granted if [192] we asked for it.

Q. You don't know, do you, of any Negroes who have been visited in their home without any request and asked to register by a Registrar? A. I would say this, all I know is what I have heard.

Q. You have no personal knowledge of any of these— A. No actual personal knowledge of this. It is what I have heard.

Q. Now, you mentioned Precinct Seven and one other precinct in Gastonia. Do you know of any—strike that. Did you participate in any drive where Registrars went out into Negro communities and rural areas in Gaston County? A. Rural areas? No, not in the rural areas.

Q. Is it true that approximately half the Negroes live in rural areas in Gaston County?

MR. STOTT: Objection.

BY MR. SCHWELB:

Q. If you know. A. I don't know.

Q. A substantial number of Negroes live in rural areas? [193] A. A substantial—I don't know.

JUDGE WRIGHT: Wait just a minute, please. Your objection is because he doesn't know?

MR. STOTT: Yes, he just answered the question he didn't know.

MR. SCHWELB: He didn't answer to a substantial number, though.

JUDGE WRIGHT: I think he could answer the question on common knowledge. Are you in a position to say whether or not a substantial number of Negroes live in the rural areas of Gaston County? Are you in a position to say whether or not—

THE WITNESS: Yes, but, you must remember we have seven smaller towns besides Gastonia in the county and what might be rural in one section may not be in another.

BY MR. SCHWELB:

Q. Let me rephrase the question. Let's divide Gastonia into Gastonia and non-Gastonia, the outlying areas. Do you

know of any—did you participate in any drives or know of any in the non-Gastonia part of Gaston County? [194] A. Not in non-Gastonia population.

Q. So this affirmative cooperation that you received from the Board is limited to Gastonia? A. To Gastonia proper.

Q. All right. Now you testified in connection with these drives that you were asked to help this one lady learn how to read or recite the oath and that you did so. A. That's right.

Q. You don't know whether she is registered or not, do you? A. No I don't because I left shortly thereafter.

Q. Now, didn't you during one or another of these drives have a conversation with one of the representatives of the Board of Elections with respect to another Negro who had been turned down? A. (Pause.)

Q. Who works for the Sanitation Department? A. Oh, yes.

Q. Now, with respect to him did somebody who is an employee of the Board of Elections tell you that that person had applied several times and been turned down?

MR. STOTT: Objection.

[195] JUDGE WRIGHT: Well, I think this witness has been put on as a person who has been a leader in the vote drive, to get Negroes on the registration rolls, and questions have been asked him about whether or not complaints came to him, etc. This is in line with that line of questioning. I overrule the objection.

BY MR. SCHWELB:

Q. Isn't that true that you were told by one of the Registrars or somebody like that that this one Negro had applied several times? A. Yes.

Q. And as far as you know, he is not registered now, is he? A. I haven't checked on it recently.

Q. It is a man who works for the Sanitation Department? A. That's right.

Q. Now, at the time when the total re-registration in 1962 was going on, Doctor Floyd, Negroes were actually being trained in how to take the registration test, weren't they?

You had schools and things of that kind? A. Will you rephrase that again?

Q. Well, weren't there—you or other Negro leaders [196] were engaged in helping Negroes qualify as voters by teaching them how to pass this literacy test? A. (Pause.)

Q. Let me rephrase the question. A. I am trying—

Q. Do you know whether or not copies of the oath were circulated in the Negro community? A. Oh, yes.

Q. Weren't there in different parts of the county reading schools or literacy schools geared to helping people pass the test? A. There may have been but I don't recall any specific—

Q. Well, there was certainly— A. On our part anyway.

Q. It was understood by you and other Negroes that the Negroes would have to pass a basic literacy test, wasn't it? A. It was understood that we had to read the oath.

Q. Read the oath. Have some ability to read and write? A. Something like that.

Q. And now, of course, you have testified that you have encouraged Negroes to register for a long time. You have talked to some who have complete literacy and some of low literacy or no literacy, haven't you? [197] A. Yes.

Q. Now, can you tell us whether or not the ones of low literacy have been more hesitant to try to register while there was a test?

MR. STOTT: Objection, Your Honor.

JUDGE WRIGHT: We will take it subject to your objection.

THE WITNESS: Well, I don't know whether it was a matter because of literacy or not, but some are reluctant to register.

BY MR. SCHWELB:

Q. Well, hasn't there been some reluctance to take a test and possibly be embarrassed? A. I suppose there would be. I couldn't say for sure but I suppose there would be.

Q. You have observed that the low literacy people have been more reluctant than the high literacy people, haven't you? A. I really haven't paid that much attention.

Q. Now, Mrs. Elsie Saunders is a Negro Registrar, isn't she? A. Yes.

[198] Q. In Precinct Seven, is that correct, in Gastonia? You don't know of any other Negro Registrar in Gaston County, do you? A. Well—

Q. Actual Registrar now. A. Well, let me qualify that a little bit. She is a permanent Registrar of Precinct Seven but in '62 we had Deputy Registrars. One was named Bonnie Massey and worked for the Excelsior Credit Union—this is a Negro institution and visited frequently by Negro customers or stockholders. At the Erwin Center we had Miss Beatrice Costner, special Registrar, and Mrs. Lionel Biggers on Lincoln, who was a beautician. These were special Registrars during '62 and—

Q. Did—I am sorry. Excuse me. A. This was Mr. Mack Davis' set-up. He was Chairman of the Election Board at that time.

Q. They were also known as Commissioners, weren't they? A. Yes—well, I don't know what they were called other than those Special Registrars.

Q. They operated in some Gastonia precincts also, didn't they? [199] A. Yes.

Q. You don't know of anything of that kind going on in any rural precinct, do you, of Negro Registrars or Deputy Registrars? I mean non-Gastonia precinct. A. Not to my direct knowledge.

Q. Now you testified that you didn't receive any direct complaints from anybody about being discriminated on the grounds of race, is that right? Nobody directly complained to you and said, "I was refused the right to register on account of my race." A. I didn't receive any.

Q. Now you didn't receive any such complaints? A. No.

Q. But now you weren't closely familiar with the white standards in the different precincts in the county, were you? A. Would you rephrase—

Q. The standards that were required of white people to register in the different parts of the county. A. All I know is that we were required to register in order to vote and

there were certain things you had to do in order to register. I think we were primarily interested in getting our people on the books.

[200] Q. Well, I think you misunderstood my question. You don't know to what degree, if any, white people were exempted in requirements? A. I don't—

Q. Do you? A. —of any—

Q. You don't know whether they were or not, do you? A. No, I don't know.

Q. To your own knowledge? Now, you testified that Mr. Jeffers and I think Mr.— well, several Negroes have been officers and elected officials in Gastonia, is that true? A. That's right.

Q. Do you know of any in Gaston County who have been elected officers outside Gastonia? A. Outside Gastonia?

Q. Do you know of any elected officials of the Negro race outside Gastonia? A. No, I know of several who ran for office but—

Q. And they lost? A. Yes.

Q. Was Mr. Hall one of these? A. Mr. Hall of Mount Holly, yes. [201] Mount Holly, North Carolina. That is Gaston County.

Q. Now, you testified on direct examination about some negotiations that were held at the time of the sit-ins and so I assume you know a little bit about the compliance or non-compliance by places of public accommodation in Gaston County. A. Yes.

Q. There have been complaints quite recently in the rural parts of the county, haven't there, about public accommodations?

MR. STOTT: Objection.

* * *

Q. Do you know—I mean, didn't you in fact communicate some to me at different times of complaints of denial of public accommodation outside Gastonia? A. Yes.

Q. And they have been quite recent, haven't they? A. Maybe two years ago.

Q. Now— A. This is only one incident I know of.

Q. Where was that? A. That was Dismukes place out on 321.

[202] Q. Well, didn't you tell me about a bowling alley in Belmont on one occasion?

* * * * *

Q. Does it remain segregated? A. I may have.

Q. Does it ring a bell? A. Belmont? If I did it was hearsay information that I had.

Q. You get hearsay information about— A. Yes.

Q. —places of public accommodations? A. That's right.

Q. Now, didn't you tell me that John T. James was refused at some establishment at Mount Holly? A. Yes, that's right.

Q. That is recently, isn't it?

* * * * *

Q. Within the last two years? A. Within the last two years, yes.

Q. And wasn't a suit brought by Mr. Chambers for the NAACP about some establishment in Gaston County in the last two years? A. There was a suit brought by Mr. Chambers.

[203] Q. Now on the basis of what you have just said— A. I can't—

JUDGE WRIGHT: Just a minute. Did you finish your answer?

* * * * *

THE WITNESS: Yes.

JUDGE WRIGHT: Go right ahead.

BY MR. SCHWELB:

Q. It is fair to say, isn't it, in your judgment as somebody who is familiar with these matters that civil rights compliance is less in the non-Gastonia part of Gaston County than it is in the Gastonia part of Gaston County?

MR. STOTT: Objection.

JUDGE WRIGHT: That would call for an opinion. I sustain the objection.

MR. SCHWELB: Well, may I be heard on that, Your

Honor. You allowed him to testify to his opinion as to whether people had been turned down on the basis of their race. I think they have qualified him in substance as kind of an expert on these racial matters.

JUDGE WRIGHT: We will take it subject to your objection.

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[204] BY MR. SCHWELB:

Q. Well, in your judgment, isn't rural Gaston County or non-Gastonia part of Gaston County more conservative and less advanced on civil rights matters than Gastonia? A. In some areas I would say yes.

Q. Would Cherryville be one of those areas? A. I would suppose so.

Q. In fact, do you recall talking to me when I first came down to Gastonia to look into this case? A. Yes.

Q. Do you remember telling me that Cherryville would be the most likely place to find discrimination if there was any? A. Yes.

Q. Isn't it true that, for example, in Mount Holly, it is less liberal on these civil rights matters—

MR. STOTT: Objection.

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[205] JUDGE WRIGHT: Let's proceed to something else.

* * * * *

Q. Let me ask you this, Doctor Floyd. Have you mentioned to me in the past that there is a Klan problem in the non-Gastonia parts of Gaston County?

MR. STOTT: Objection to that.

JUDGE WRIGHT: Would you read the question back, please?

(Whereupon the last question was read by the reporter.)

We will take it subject to the objection. Answer the question, please.

THE WITNESS: Not a Klan problem.

BY MR. SCHWELB:

Q. Well, there is Klan activity? A. Well, there is Klan activity. There has been some, yes.

Q. Where did you go to school? I don't mean college. I mean school. A. School?

Q. Yes. [206] A. Well, I went to the community school there in Gaston County, Trinity Elementary School, up through the sixth grade, I think, and then I went to Lincoln Academy which is out near Kings Mountain, the high school there.

Q. The elementary school you went to, was that an all-Negro school? A. Yes.

Q. And all Negro teachers? A. Yes.

Q. How many months in the year were you going to school? A. Well, that was a long time ago, but as I recall it was first a six-months school and then advanced to eight.

Q. Until the last few years education was totally segregated in Gaston County, wasn't it? A. Yes.

Q. And you don't have any doubt, do you, that the Negro schools were substantially inferior over the years to the white schools?

MR. STOTT: Objection.

JUDGE WRIGHT: Well, I sustain the objection. It calls for an opinion.

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[207] (By Mr. Schwelb:)

Q. Now, you have testified as to a number of meetings that you had with Mr. Hollowell, and you and other Negroes have had prior to the bringing of this suit. A. Yes.

Q. I think Mr. Hollowell—did Mr. Hollowell mention [207A] anything about the problems of industry in connection with this suit? A. I don't know whether Mr. Hollowell did or not, but as I recall it was mentioned that we would like not to have this Civil Rights Act around us, you know, be under it, because it may be a deterrent to industry, something like that. I think this was brought up but I don't recall Mr. Hollowell making the statement himself.

Q. Now, you never told anything to Mr. Hollowell besides that you didn't have any specific complaint of personal information about this from the Act, is that right? A. That's right.

Q. Now, let me ask you whether at that time you knew anything about John Patterson in Cherryville and his experience? A. At that time I did not know anything about it.

Q. Did you at that time know anything about Frank Miller and his experiences? A. Frank Miller?

Q. Also in Cherryville. A. No.

Q. Or Mrs. Burch in Mount Holly?

MR. STOTT: I object to this.

* * * * *

[209] (By Mr. Schwelb:)

Q. Well, let me ask you this. Did you ever make any personal investigation of what the white standards were in the different precincts, the standards for white applicants for registration?

MR. STOTT: Your Honor, I object. I believe he has asked that question already.

JUDGE WRIGHT: If he has, I haven't heard the answer. Did you hear the question?

THE WITNESS: Would you read it, please? Would you restate the question?

BY MR. SCHWELB:

Q. Do you have any special knowledge or did you make any particular investigation as to what was required of white applicants in the different precincts in Gaston County? A. No, I didn't.

Q. You don't know what was required of them, do you? A. No, not other than the formal procedure for registering.

Q. Well, you don't know to what extent that was followed with white applicants, do you? A. No, I didn't investigate it.

Q. Now, for example, you testified about this one Negro who didn't have his glasses with him, and the Registrar finding [210] some glasses for him. You thought that was favorable action towards that applicant, didn't you? A. To me it showed a willingness and desire of the Registrar to register whomever he could register.

Q. Do you know whether or not white people who forgot their glasses were registered without any test? A. I

know nothing about what happened in the white sections. I don't–

Q. Now, is it true in Gaston County generally, sir, that– well, that some of the Registrars register in their homes, do they not? A. Yes, they do.

Q. And that is true in particular in the rural part of the county, isn't that true? A. I don't know what happens in the rural, you know, all over. I mean, specifically, not to my knowledge. I couldn't say that this actually happened.

Q. Is is more– A. Or did not happen.

Q. Well, it is more customary generally in the county, isn't it, for white people to have white guests in their home than Negro guests?

[211] MR. STOTT: I object to that on the grounds–

JUDGE WRIGHT: We will take it subject to your objection.

BY MR. SCHWELB:

Q. Socially? A. No. What did you say now?

Q. Well, isn't it more customary for white people to have white guests in their home, social guests? A. Oh, yes.

Q. That is well known, isn't it? A. Yes, sure, that is a known fact.

Q. Now, in your observation of the registration procedure, you observed, didn't you, that some degree of discretion had to be exercised by the Registrar in determining whether or not somebody had sufficient literacy to pass the test? A. Yes.

Q. And almost all these Registrars were white? A. Yes.

Q. Now, I think–how many times have I been at your home, Doctor Floyd, do you recall? A. I recall only two.

Q. Now recently we had some discussion, did we not, about the different kinds of discrimination that were possible?

MR. STOTT: Objection.

[212] JUDGE WRIGHT: That is overruled. You can answer yes or no and wait for the next question.

THE WITNESS: Yes, I guess so.

BY MR. SCHWELB:

Q. I think you made some distinction between overt discrimination and subtle discrimination, did you not?

MR. STOTT: Objection to that.

* * * * *

JUDGE WRIGHT: Did you say that there was discrimination against Negroes that was covert rather than overt, in other words—

THE WITNESS: I didn't say that.

JUDGE WRIGHT: You didn't say that.

* * * * *

Q. Well, did you say that there could be a subtle discriminatory effect of something even if it wasn't overt?

MR. STOTT: Object to that.

JUDGE WRIGHT: That is overruled: Did you say that or not?

[213] THE WITNESS: In the conversation we had I said that it may be a subtle type of discrimination but I didn't know of any open discrimination.

BY MR. SCHWELB:

Q. And you discussed with me the difference between a discriminatory purpose and a discriminatory effect, didn't you? A. Discriminatory purposes?

Q. Discriminatory purpose and discriminatory effect. A. I guess you would call it that. I don't know. I am not—I can't categorize it, but you might call it that—

Q. Well, now you are concerned about the continued right of the Negroes to register to vote in Gaston County, aren't you? A. Yes.

Q. And you have stated, haven't you, that you have a preference as to whether there should be a literacy test or not a literacy test in connection with your concern for the right of Negroes to register? * * * * *

Q. Well, let me rephrase the question. Didn't you tell me that you would rather not see a literacy test, you would rather see it done away with? [214] A. Well, I said that I think that—in the conversation I don't know if I drew an opinion or not—but if you recall I think I said it didn't

seem to me it made much difference. Do you remember that?

* * * * *

A. As to whether or not we had a literacy test because I didn't see where it was a deterrent for voters, as far as, you know, them actually being turned down without being given the benefit of the doubt.

Q. Well, you did tell me, didn't you, that it could very well be a subtle discrimination?

MR. STOTT: Objection.

THE WITNESS: I did say—

JUDGE WRIGHT: That is overruled. What did you say?

THE WITNESS: I did say that it very possibly could be a subtle type thing but that was just an opinion.

BY MR. SCHWELB:

Q. Well, Doctor Floyd, I would like to show you a deposition of Registrar Mr. Oates, taken in this case.

* * * * *

[215] Q. And I would like you to read—well, why don't you read this answer given by Mr. Oates in his deposition?

MR. STOTT: Well, I object. I don't know what is in the question.

JUDGE WRIGHT: Well, step up and see what that is.

* * * * *

[216] MR. SCHWELB: I am asking, I wanted this witness to read some testimony, "a gang of niggers, good niggers," and other things on this page, and ask him as to whether in his judgment a Negro would be likely to get an equal deal in a close case with that Registrar.

JUDGE WRIGHT: I think we are getting a little far afield. This testimony speaks for itself.

JUDGE ROBINSON: I don't need his answer.

MR. SCHWELB: Thank you, Your Honors, I withdraw the question.

* * * * *

Q. I withdraw that question for the time being. Let me ask you this, Doctor Floyd. Is it true that—you mentioned there was some Klan activity in the rural—in the non-Gastonia parts of the county.

MR. STOTT: Object to that, Your Honors.

* * * * *

Q. Well, you have testified, I believe, that you are [217] aware of some Ku Klux Klan-type activity in the non-Gastonia part of Gaston County.

MR. STOTT: Objection.

JUDGE WRIGHT: Did you testify anything with reference to Ku Klux Klan activity outside Gastonia in the county?

THE WITNESS: You mean here?

JUDGE WRIGHT: Yes, today. That you had heard something about it.

THE WITNESS: Cherryville.

JUDGE WRIGHT: Cherryville.

THE WITNESS: Cherryville.

JUDGE WRIGHT: What did you say?

THE WITNESS: Cherryville. I am trying to recall now. Did I testify to something about Klan activity here, right here in this courtroom?

* * * * *

Q. Well, irrespective of this courtroom, Doctor Floyd, is it a general feeling in the Negro community, a general belief, in your judgment, that there is some Klan activity in the non-Gastonia part of Gaston County?

MR. STOTT: I object.

* * * * *

JUDGE GASCH: It is repetitious.

* * * * *

[218] JUDGE WRIGHT: Ask your next question. I think the Court remembers that he did say he did remember hearing about this Klan activity.

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Q. Now, let me ask you this. Would it be true to say that a Negro living in one of those rural areas wouldn't have any particular way of knowing whether the Registrar is participating in this Klan activity or not?

MR. STOTT: Objection.

JUDGE WRIGHT: Well, I think it is obvious that Klan activity would reduce voting and applications from Negroes to register. So I don't think you have to paint any pictures.

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[219] JUDGE ROBINSON: You testified that in 1962 and again in 1964 there were registration drives, and my understanding from your testimony is that there was considerable publicity?

THE WITNESS: Yes.

JUDGE ROBINSON: Incidental to these drives?

THE WITNESS: Yes.

JUDGE ROBINSON: Was there anything contained in any of this publicity as to the enforcement or non-enforcement of the North Carolina literacy requirement with respect to those persons who might present themselves for registration?

THE WITNESS: No.

JUDGE ROBINSON: Any reference to the literacy requirement at all in connection with any of this publicity so far as you can recall?

[220] THE WITNESS: Not as far as I can recall.

* * * * *

JUDGE WRIGHT: Doctor, did you participate in your registration activities in 1966 as well?

THE WITNESS: Yes.

JUDGE WRIGHT: When you were trying to get Negroes to register did you advise them at that time that no literacy test was necessary? In other words, did you let them know that it was no longer required that there be a literacy test?

THE WITNESS: As I recall, I think we did, but we didn't put too much emphasis on that.

JUDGE WRIGHT: Do you know any illiterate Negroes who have been registered in Gaston County?

THE WITNESS: Yes.

JUDGE WRIGHT: You say you do know?

THE WITNESS: Yes.

JUDGE WRIGHT: Can you name them?

THE WITNESS: Well, I know one lady, Mrs. Annie Robinson. I know of one—I definitely know this. She is on the books. And there are some others, I am sure, but I just couldn't call the names right off.

[221] JUDGE WRIGHT: Is she blind or—

THE WITNESS: No, she is not blind.

JUDGE WRIGHT: How do you happen to know that she is illiterate and registered?

* * * * *

JUDGE WRIGHT: Is there something special about her case?

THE WITNESS: Well, she is a patient of mine and patient dealings, and what not, I know she can't read.

JUDGE WRIGHT: You say she can't read. How do you know she can't read?

THE WITNESS: Well, you know how it is when you go to the doctor, certain information you have got to give, and what not, and a matter of reading receipts and things of this type.

JUDGE ROBINSON: Reading what, sir?

THE WITNESS: Reading receipts that you pay, you know, pay you some money, you give them a receipt or you give them an appointment for that date. You give them a card and this information I know.

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[222] TESTIMONY OF A. C. HONEYCUTT

* * * * *

DIRECT EXAMINATION

(By Mr. Stott)

Q. Would you state your name, please? A. A. C. Honeycutt.

Q. Where do you live, Mr. Honeycutt? A. Gastonia, North Carolina.

Q. What type of work are you engaged in? A. Minister.

Q. Minister of what church? A. Saint Stephen, M.E. Zion Church.

Q. Is that church located in the City of Gastonia? A. Yes, it is, on North Marietta Street.

Q. How long have you been a pastor or a minister at [223] this church in Gastonia? A. For ten years.

Q. Since you have lived in Gastonia, have you taken any part whatever in the registration of voters in the county? A. I have.

Q. Are you familiar with the Human Relations Committee in Gastonia? A. Yes, I am.

Q. Have you ever served on that committee? A. Yes, I am serving on it at present.

Q. When were you first appointed to this committee if you can recall? A. It was this year.

Q. Did you serve on it prior to this year? A. No, I didn't.

Q. When were you appointed to serve? When this year, if you recall? A. I think it was about three weeks ago.

Q. All right, sir. By whom were you appointed to this committee? A. The mayor.

Q. Of what? A. Of Gastonia.

[224] Q. Do you recall the registration or the new registration which was put into use or into effect in Gaston County in the year 1962? A. Yes, sir, I do.

Q. That was in April 1962? A. Right.

Q. Now, at that time, Mr. Honeycutt, what, if anything, did you do to encourage citizens of Gaston County to register at the time of that new registration? A. Well, we used all our bulletins—

Q. When you say "bulletins," would you tell the Court what kind of bulletin you mean. A. That is on our weekly church bulletin, encourage the people to go to the polls and register.

Q. Was that a bulletin that was prepared by you? A. Yes, sir.

Q. Could you tell us generally what type of information you put in the church bulletin to the people in regard to registration? A. Well, I would make a statement like, "Be a good citizen; go to the polls and register."

Q. Did you ever make any announcement in the pulpit— A. Yes, I did.

[225] —in that regard? A. Yes, sir.

Q. Did you do that in the year 1962? A. I did.

Q. Would you say whether or not you did make any announcement in your pulpit in April of 1962 in regard to registration? A. Yes, I did.

Q. Did you make any announcements prior to April 1962? A. I did.

Q. You are familiar with the fact that the registration of—new registration started on April 21, 1962? A. Yes, I am.

Q. At that time did you make any statements to the members of your congregation as to whether or not a person would be required to pass a literacy test in order to register? A. No, I didn't. I was not aware of the literacy test.

Q. Have you served on any other committees other than the Human Relations Committee in Gastonia, say, for the period of, well, five years prior to 1966? A. Yes, I have.

Q. Would you relate to the Court— A. I served once at the Mental Health Clinic.

[226] Q. The Mental Health Clinic? A. That's right.

Q. All right. That is county-wide. A. County-wide organization.

Q. All right. A. And I also served with the—on the Gaston County Citizen's Committee.

Q. Now, the Gaston County Citizen's Committee, would you tell us what you did with that committee or through that committee in regard to registration? A. Well, it was one of the key functions was to try to get people to the polls for registration, and that was our main function. We tried to see how many people we could get to the polls to register.

Q. Mr. Honeycutt, do you recall what, if anything, this Gaston Citizen's Committee did in 1962 to assist and to encourage Negro citizens to register and vote? A. Yes, sir. We had meetings and we had a truck at one time go around the community.

Q. What kind of a truck? A. It was a sound truck, announcements all over the city [227] to go to the polls and

register. And we also published it through the churches, church bulletin, asking people to go to the polls.

Q. Have you ever served in any capacity as an election official? A. Yes, I have; in '64 I served as one of the judges at the poll.

Q. In what precinct was that? A. Four, Ward Four.

Q. In Ward Four? A. Yes.

Q. Was that in a city election? A. That's right.

Q. Have you served as a judge in any election other than a municipal election? A. Yes, I have served in the county election.

Q. Do you recall how long ago that was, Mr. Honeycutt? A. No. I think it was about two years ago, if I am—about two years ago.

Q. Do you have any knowledge of what the—as to the year 1961—as to what steps, if any, were taken in regard to the integration of eating establishments in Gastonia? A. What was your question?

[228] Q. Do you have any knowledge of what, if anything, was done in regard to the integration of eating establishments in Gastonia in 1961? A. Yes, I do. The Human Relations Committee at that time sort of was working on the problem of opening up these eating-establishments and we were asked to go to certain places and try them out.

Q. And did you do that? A. Yes, we did.

Q. Were these places integrated in 1961 to your knowledge? A. They were.

Q. Was that to you knowledge done voluntarily, Mr. Honeycutt? A. Yes, through the committee.

Q. All right. A. The Human Relations Committee.

Q. Do you know of a place on Highway 321 that Mr. Dismukes was connected with? A. Yes, I do.

Q. What was the name of that place? A. That was the Coffee Cup.

Q. All right. [229] Now, could you tell us what, if any, difficulty you had in regard to integration of that particular place in Gaston County? A. Well, it was reported that this man would not serve Negroes. And two or three Ne-

groes went there to be served and they came back and reported that he would not serve.

Q. Do you know of any place other than the Coffee Cup that that occurred? A. Not to my knowledge.

Q. Are you familiar, Mr. Honeycutt, with—strike that, please. Do you know whether or not any Negroes have served as elected officials in the City of Gastonia? A. Yes, I do.

Q. In the last ten or 15 years? A. Yes.

Q. Do you recall—strike that. You know the names of these Negroes, do you not, sir? A. Yes, I do.

Q. Would you state them for the record? A. Nathaniel Barber—

JUDGE WRIGHT: Haven't we been through this?

MR. STOTT: I just wondered, Your Honor. That's why—

[230] JUDGE WRIGHT: I think we have been over that.

MR. STOTT: All right.

BY MR. STOTT:

Q. Were you present sometime in 1965 or '66 at the time Mr. Hollowell—and talked to Mr. Hollowell about the institution of a suit when Gaston County was placed under the Civil Rights Act of 1965? A. Yes, I was present.

Q. As a result of that conference with Mr. Hollowell, what, if anything, did you do yourself in regard to finding out or determining whether or not there had been any discrimination against people, refusing to register people because of race and color? A. Well, we were asked at that meeting to try to poll the city and the county to see if anyone had been denied the right to register. And we sought through the city and the county to see if we found any complaints at all and we found none. And I was also asked to contact the—

MR. SCHWELB: Objection, Your Honors, to the "found none," that he is trying to assert what somebody else told him.

JUDGE WRIGHT: Well, I take it his testimony is [231] limited to himself and he said he found none, as far as he knows.

MR. SCHWELB: Your Honor, complaints from other people.

JUDGE WRIGHT: Well he, personally, received no complaints. That is the way I understand it.

* * * * *

BY MR. STOTT:

* * * * *

A. We asked other ministers to—

Q. When you say "we" do you mean yourself or we, now? What you did? A. We, those persons who were concerned.

Q. Yes, but I am asking you, Mr. Honeycutt, just what did you do as a result of this meeting that you had with Mr. Hollowell? A. Well, I went out and I asked people whom I knew and met if they had been denied the right to register.

Q. All right. A. And we also contacted ministers and asked them to do the same thing in our local congregation, to find out if there were any people there who, you know, something, who did not register, and what was the reason.

[232] Q. Did you make any announcement in your church? A. I did.

Q. Did anybody make any complaints to you? A. None that I received.

* * * * *

CROSS-EXAMINATION

BY MR. SCHWELB:

Q. Now, Reverend Honeycutt, you told Mr. Hollowell and you told the officials that you didn't know of any discrimination personally, didn't you? A. That's right.

Q. And after the suit was brought I came to see you, isn't that true? A. That is correct.

Q. We have had several discussions, haven't we? A. Yes.

Q. And you told me at that time that I ought to check Cherryville, didn't you? A. Well, I said there had been some complaints and that was also brought out at the meeting that there had been some complaint, but what it was I didn't know.

Q. Well, you did express the thought, didn't you, that it would be a good idea for me to find out? A. Yes. I told you if you wanted to check that, it would [233] be a good thing to check.

Q. So you didn't have any positive knowledge at that time that there was no discrimination in Cherryville, did you? A. How was the question?

Q. You didn't have any positive knowledge there had been no discrimination in Cherryville, did you? A. No.

Q. You don't have any positive knowledge now that there has been no discrimination in Cherryville, do you? A. No, I don't.

JUDGE WRIGHT: Wait just a minute. Your testimony, as I understood it, was limited to Gastonia.

THE WITNESS: Right.

JUDGE WRIGHT: Not going outside of Gastonia.

THE WITNESS: I don't know anything about Cherryville.

BY MR. SCHWELB:

Q. You made no investigation of any kind outside Gastonia, is that right? A. Yes, we have outside the city. We have gone into some of the county, but not in the city of Cherryville.

Q. So really it would be fair to say you didn't know at that time whether there had been discrimination in some parts [234] of the county or whether there hadn't? A. That's correct.

Q. Now, even in the ones where you investigated directly you don't know what was required of white people to register, do you? A. No, I don't.

Q. You don't know how many have been exempted from the requirements of North Carolina law, do you? A. White people?

Q. Yes. A. No, I don't.

Q. You wouldn't be at all surprised if there were quite a lot, would you?

MR. STOTT: Objection.

JUDGE WRIGHT: I sustain the objection.

* * * * *

Q. Now, Reverend Honeycutt, as between Gastonia and the county, these Negro officials that you talked about have all been in Gastonia, haven't they? A. You mean in office?

Q. Yes. A. That is correct.

[235] Q. And have you told me on different occasions that there is a Ku Klux Klan problem in the rural parts of the county? A. Well there is.

Q. It is much greater there than in Gastonia, isn't it? A. I would think so.

Q. That is common knowledge among Negroes, isn't it?

MR. STOTT: Objection.

JUDGE WRIGHT: I overrule the objection.

* * * * *

Q. It is common knowledge among Negroes, isn't it? A. I suppose so.

MR. STOTT: Oh, I object.

JUDGE WRIGHT: Do you know whether or not it is common knowledge among Negroes?

THE WITNESS: I don't know.

* * * * *

Q. Well, do you know whether a lot of Negroes know about it?

MR. STOTT: Object.

THE WITNESS: No, I don't.

JUDGE WRIGHT: Are you satisfied with his answer?

* * * * *

[236] Q. Now, Reverend Honeycutt, I am not sure I understood your direct testimony correctly, but you knew that prior to the Voting Rights Act people had to know how to read and write to register, didn't you? A. I was not clear on it.

Q. Well, let me ask you this question. You encouraged Negroes to register and vote over a period of time, didn't you? A. Yes, I did.

Q. Now, isn't it true that some of the Negroes who were of low literacy were hesitant to go up there because of the test?

MR. STOTT: I object to that unless he knows.

JUDGE WRIGHT: Do you know of any Negroes who were hesitant to attempt to register because they were illiterate?

THE WITNESS: Well, now, there were some people that I—I don't recall now who they were—who might have been sort of fearful of going to the polls.

* * * * *

Q. If they had to take the literacy test in most areas they would have to go before a white Registrar, wouldn't [237] they?

MR. STOTT: Objection.

JUDGE WRIGHT: I think that is a matter of record and it would just be repetitious. I will sustain the objection.

* * * * *

Q. Now, in previous conversations with me, you have had discussions with me, have you not, about the general feelings of the Negro community as to various problems of voting and similar problems? A. Yes.

Q. And one of these was at your house not more than two weeks ago, isn't that true? A. That is correct.

Q. And did you mention to me at that time that you personally associated the literacy test with the grandfather clause?

MR. STOTT: Objection.

THE WITNESS: No, I don't recall—

JUDGE WRIGHT: Wait just a minute. I sustain the objection. * * * * *

[239] (By Mr. Schwelb:)

Q. Now, the schools have been racially segregated in Gaston County until fairly recently, haven't they? A. Yes, they are.

JUDGE WRIGHT: You say they are what now?

THE WITNESS: They are desegregated.

JUDGE WRIGHT: Desegrated?

Q. Desegrated now? A. That's right.

Q. But when the people who are now voting were children they were not desegregated by and large.

MR. STOTT: Objection.

[240] (By Mr. Schwelb:)

Q. Isn't that true? A. I didn't understand your question.

Q. Well, let's say five years ago they weren't desegregated, were they? A. No, they were not.

JUDGE WRIGHT: When did desegregation come to Gaston County?

THE WITNESS: I believe it was around '64.

* * * * *

Q. Well, is it true that in your judgment quite a number of older Negroes had a very difficult time learing how to read and write? A. Yes, indeed.

Q. You know a number of them yourself, don't you? A. Yes, I do.

Q. And their opportunities for education in their young days were very limited as far as you know?

MR. STOTT: Objection.

THE WITNESS: That's true.

* * * * *

[241] Q. Now—

JUDGE WRIGHT: Just a moment, please. I sustain the objection. I don't think this witness can just give an opinion generally that people's opportunities for education were limited. We have to have something more specific.

* * * * *

Q. Well, let me ask him this way then. Do you know of a number of older Negroes who have very little education? A. I do.

Q. Who have very limited reading ability? A. Yes, I do.

Q. Now on those Negroes will the literacy test in your opinion be a burden in letting them register to vote? A. To some it would.

Q. And I believe—did you tell me when I was at your house recently that there was plenty of time to have a literacy test when everybody has had a chance to go to school?

MR. STOTT: Objection.

JUDGE WRIGHT: That is overruled. He can test [242] credibility now.

THE WITNESS: I think I made the statement that with the older people it would be difficult, with the younger people it would be a little simpler.

BY MR. SCHWELB:

Q. Well, you think that it is a burden on the older people of the Negro race? A. I would think so—

MR. STOTT: Objection.

THE WITNESS: —on some of them.

JUDGE WRIGHT: That is overruled.

* * * * *

REDIRECT EXAMINATION

BY MR. STOTT:

Q. Mr. Honeycutt, do you know any elderly white people in Gaston County who have a limited education? A. I do.

Q. Do you know some who have difficulty, that is, white people, reading and writing? A. Yes, I do.

[243] Q. Do you have an opinion as to whether or not the test, the literacy test in Gaston County is administered as fairly to Negroes as to white people? A. My opinion is that it is as fair to one as it is to the other.

MR. STOTT: Thank you. That's all.

RECROSS-EXAMINATION

BY MR. SCHWELB:

Q. You don't have any knowledge as to most parts of the county as to what tests, if any, are given to white people, do you? A. No, I don't.

Q. So really you have no basis for comparison, do you? A. No, I don't, but I thought you said Gastonia.

Q. Well— A. In the City of Gastonia.

Q. Even as to the City of Gastonia, you don't know what waiver there may have been for some white people at their homes? A. No, I don't.

Q. Now, you mentioned you know some white people who are of low literacy. [244] A. That's true.

Q. Now, can you name some of them? A. Not offhand, but I have come in contact with them, who have difficulty reading.

Q. Do you know whether or not they are registered or not? A. No, I don't.

Q. Well, you do know, don't you, that a lot of white people who can't read have been voting all their lives? A. I don't know that.

Q. Isn't that common—isn't that commonly believed at least—

MR. STOTT: Objection.

MR. SCHWELB: —in Gaston County?

JUDGE WRIGHT: I sustain the objection. He said he doesn't know that.

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[245] TESTIMONY OF DONALD E. RAMSEUR

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DIRECT EXAMINATION

BY MR. STOTT:

Q. State your name, please. [246] A. Donald E. Ramseur.

Q. Mr. Ramseur, you live in Gastonia? A. That is correct.

* * * * *

Q. How long have you lived in Gaston County, Mr. Ramseur? A. Since September of 1954.

* * * * * A. On the first occasion I had lived there four years prior to that time in the 30's.

Q. What is your profession? A. Attorney.

Q. How long have you been practicing law? A. Since September of 1954.

Q. You practiced all the time there in Gastonia, is that correct? A. Yes, I have.

Q. What school did you graduate from? A. I attended law school at North Carolina College in Durham.

[247] Q. Have you been elected to any public office in the City of Gastonia, Mr. Ramseur? A. Yes, I have.

Q. What office is that? A. I am a member of the Gastonia City Board of Education.

Q. And when were you elected to the City Board of Education? A. In March of 1965, I believe.

Q. Did you run in an election? A. Yes, I did.

Q. At that time did you run unopposed or did you have opposition? A. I had opposition.

Q. Was your opposition Negro or white? A. White.

Q. How many did you have running in that race with you? A. Two.

Q. So there were three in all? A. Three of us.

Q. And do you recall what the vote was that you received in that election? A. I do not recall the actual vote. I think the vote that I received was something in excess of 300 votes and there [248] were I believe a little less than 600 votes cast.

Q. Very little interest shown in that election? A. Well, it was really more than had been shown in the previous school board elections.

Q. Right. People usually don't turn out too well for school bond elections and that sort of thing? A. Well, school board elections there has been very much interest in.

Q. Right. Well, anyway, when you were elected, Mr. Ramseur, is it your opinion that in order to be elected that you had to receive a substantial number of white votes, to be elected to this office? A. That is correct.

Q. Now back in 1962 did you take an active part in the election process, that is, in regard particularly to registration of voters in Gaston County? A. Yes, I did.

Q. Would you relate to the Court what part you played or what you did to encourage people to register and vote, let's say, for the three months prior to April 21, 1962, and through the year 1962? A. I do not recall the exact months of the year that we [249] worked but I worked with the Citizen's Committee, which was then headed by Doctor Floyd, and I lent whatever assistance I could to the Committee to encourage persons to register.

And I recall, I believe I recall having distributed some literature with respect to registration and I talked to persons on the street, in my office, in the church, and other gatherings, wherever I happend to be, and remembered that the

re-registration was coming up. And I think I carried a number of people to the registration precincts.

Q. Did you ever have any person to make any complaint to you that that person had been denied the right to register and vote—to register because of race? A. No, I didn't.

Q. Would you say whether or not you have had any such complaint made to you from 1962 through, say, 1966? A. No, I haven't.

Q. The committee that you refer to, the Gaston County Citizen's Committee, Mr. Ramseur, was that Committee made up of Negroes? A. Yes, sir.

Q. And have you ever been a member of the Human Relations Committee in the City of Gastonia? [250] A. Yes, I have.

Q. When were you first appointed to that committee, if you were appointed? A. I was appointed and I do not remember exactly when it was but it was prior to 1963.

Q. Do you recall the work of this committee in regard to integration of eating establishments in the City of Gastonia in 1961 or thereabouts? A. Yes, I do. I assume that that is when it was; if that is the year that the work was done with respect to the encouragement of establishments to open their doors to Negroes, I was on the committee at that time.

Q. Mr. Ramseur, do you know of your own knowledge whether or not the City of Gastonia received the All-America City Award two or three years ago? A. Yes, I do.

Q. Do you have an opinion whether or not the test, the literacy test that has been in use in Gaston County, has been used uniformly without the purpose of discriminating against race or color in registration of voters, Mr. Ramseur? A. Yes.

Q. What is your opinion? [251] A. To the best of my knowledge, it has not been used in any discriminatory fashion.

Q. Had you ever attended any of the special places or places where registrations were being held for Negroes? A. Yes, I had.

Q. Do you recall any particular place or incidents or times? A. Well, I do not recall any specific time, but to the best of my knowledge I believe there was a registration that was being held at the Highland Elementary School. Now this could have been a city election. I am not sure.

Q. You are not sure about that? A. No.

Q. All right. A. Or registration, rather.

Q. Do you actually assist in the elections themselves? A. At various times I have.

Q. Well— A. Because I have carried persons to the polls and I have discussed with them the registration procedures and told them, encouraged them to go.

Q. Mr. Ramseur, since you have been a member or since [252] you have been practicing law in Gastonia, since 1954? A. Yes.

Q. Have you been a member of the Gaston County Bar Association? A. Yes, I have.

Q. Have you participated in the activity of that association in legal matters as well, or legal concerns of that association as well as social? A. Yes, I have.

Q. Functions of that association? A. Yes.

Q. And are you a member of the American Bar Association? A. I am not at the present time.

* * * * * A. I have been.

Q. Any particular reason why you are not at the present time? A. Well, in 1963 I had a period of hospitalization and that threw me back financially and my membership ran out, I think, in '64 and I did not renew it.

Q. And it hasn't been renewed? A. I intend to renew it.

Q. All right. [253] Are you a member of the North Carolina Bar Association? A. No, I am not.

Q. Why—or have you ever applied for membership in the North Carolina Bar Association? A. No, I haven't.

Q. Do you understand as to whether or not you would be—if you applied you would be admitted? I am talking about the North Carolina Bar Association rather than the State Bar. A. Do you mean at the present time?

Q. Yes. A. The impression I get from what I have heard and what I have read and from what has been said to me is that I could now be admitted.

Q. As to the North Carolina Bar Association? A. Yes.

Q. * * * * * Now, have you served on any other committees or boards in Gaston County since you have been practicing law there, Mr. Ramseur, since 1954? A. Yes, I have.

Q. Would you relate to the Court what some of these [254] boards are? A. I am presently on the Board of Directors of the United Community Services of Gaston County, which is commonly known as the United Fund. And I am a member of the executive committee. I am on the mayor's Human Relations Committee.

Q. Are you presently a member of that committee. A. Yes, I am.

Q. All right, sir. A. I am a member of the advisory board of the Salvation Army Boy's Club, and I am president of the Gaston Boy's Club.

Q. Is that— A. I don't recall—

Q. Well, the Salvation Army Advisory Board, do you serve on that and the United Fund committees with whites and Negroes? A. Yes.

Q. Are there other Negroes on these boards? A. I am the only Negro on the Salvation Army Boys' Club Advisory Board. However, we do have I believe two Negroes on the Salvation Army Board, which is the administrative [illegible] of the local unit of the Salvation Army. [255] And the Boys' Club Advisory Board is strictly for the operation of the Boys' Club itself and operates under the—

Q. What about the United Fund? A. Board.

Q. Do any other Negroes serve on the committees or executive committees of the United Fund that you know about? A. I think I—I am the only Negro on the executive committee, but Mr. Jeffers is a member of the board of directors.

Q. Now, when you speak of Mr. Jeffers, whom are you referring to? A. He is a Negro in Gastonia, principal of one of the schools.

Q. Now did you serve in any capacity in connection with any of the hospitals in the county? A. Yes, I am now a member of the Board of Trustees of what was once the Gaston Community Hospital.

Q. * * * * * Was that formerly called the Gaston County Negro Hospital? A. That's right. The name was changed some two years ago.

[256] Q. That hospital is no longer in operation? A. No.

Q. Do you know of another hospital in Gaston County or Gastonia? A. Yes, the Gaston Memorial Hospital. And incidentally, I am on the committee which has been planning for the construction of a new hospital for the county.

Q. All right. That committee was formed by the County Commissioners of Gaston County, was it not? A. Yes, that's right.

Q. Now, do you know—. A. It was appointed.

Q. Excuse me. A. It was appointed by the—

Q. All right, sir. Do you know whether or not the Gaston Memorial Hospital is integrated, Mr. Ramseur? A. Yes, it is.

Q. Do you know whether or not the nurses Negroes are accepted into the nursing school at this hospital in Gastonia? [257] A. Yes, they are, to the best of my knowledge. Now, I don't know if we have any in the school or not.

Q. All right, sir. Do you know whether or not the schools in Gaston County are now integrated? A. Yes, they are.

Q. Do you know when the schools were integrated? A. Now, the major integration took place in the—last September.

Q. Was that after you had been elected to the school board? A. Yes.

Q. Had there been some integration— A. Of course, I might clarify this. My board only deals with the Gastonia City School System. We have three school systems in the county. There are three systems.

Q. All right. In September or prior to September, 1960—what date did you say? A. '66.

Q. '66, had any of the schools in the Gastonia City [258] School System integrated? A. Yes, they had.

Q. Do you know approximately how many? A. The Mary Wilson School was just about 50-50 integrated the school session prior to the 1966 session. The Ashley High School was integrated. There were several Negroes there the previous session. I am not sure, but I believe the East School had a few Negroes.

Q. Now, the East School, is that elementary, junior high, or high school? A. It is an elementary school.

Q. You say that it is your opinion that it was integrated prior to September '66? A. I believe East School was. I am not positive.

Q. All right, sir. That was before— A. That was the major integration.

Q. Since it was before your time on this school board you were not too familiar with it, is that correct? A. Well—

Q. As to actually— A. I went on in March of '65, so the '65 session started [259] that September.

Q. Yes. A. Of course, I was sort of feeling my way.

* * * * *

CROSS-EXAMINATION

BY MR. SCHWELB:

Q. Mr. Ramseur, you have been active in helping the plaintiff prepare this case for trial, haven't you? A. I have given them whatever information I could, yes.

Q. Well, you helped them find witnesses, didn't you? A. Yes, I did.

Q. That were low literacy Negro witnesses, at least, that is what you were trying to find? A. Yes.

Q. The plaintiff asked you to find low literacy Negro witnesses? A. Now, as a matter of fact, they had a list of persons whom they thought were possible illiterates and we went to see them and talk with them.

Q. You went with one of the attorneys for the plaintiff to their homes? A. Yes, that's right.

Q. Just for a moment, you mentioned something about [260] the North Carolina State Bar Association, that you believed you could be admitted to it now? A. Yes.

Q. Do you believe you could have been admitted last year? A. I don't think so.

Q. Isn't it true that the first two Negroes were admitted to it very recently? A. That is correct.

Q. And one of those Negroes is Mr. Julius Chambers, isn't he? A. I don't remember if Julius was admitted.

* * * * *

MR. STOTT: I object. I think it is rather immaterial.

JUDGE WRIGHT: All right.

THE WITNESS: Well, it could be.

* * * * *

Q. Mr. Ramseur, let me ask you this. Mr. Chambers is a civil rights lawyer generally as distinguished from you. You are not? [261] A. That is correct.

Q. So that Mr. Chambers has done some civil rights work in Gaston County, hasn't he? A. Yes, he has.

Q. By and large that is not your field at all, is it? A. No, it hasn't been.

Q. Did you have any discussion with him about this case at any time? A. Mr. Chambers?

Q. Yes. A. No, but I have discussed cases with him prior to this.

Q. You didn't ask him— A. I did not have—

Q. I am sorry.

JUDGE WRIGHT: Let him finish. Did you want to say something?

THE WITNESS: Yes. I was about to say that Mr. Chambers, of course I have known him quite sometime. I don't know him very personally, but I referred one employment case to him in Charlotte and I think he worked on that.

* * * * * *

[262] A. —Knowing that he was the representative in that area.

Q. You didn't check with him as to whether he had any information about Gaston County voting? A. No, I didn't.

Q. He lives in the adjoining county, doesn't he? A. That's right.

Q. Now, you testified that you had an opinion as to whether or not the literacy test has been discriminatorily applied. A. Yes.

Q. Now, Mr. Ramseur, you wouldn't class yourself as an expert in that field, would you? A. No, I wouldn't.

Q. Well, let's see. Have you examined the voting records in the different precincts? A. No.

Q. Have you gone door to door to get Negroes to register? A. Yes, I have.

Q. When was the last time you did that? A. I couldn't tell you.

Q. You don't do it frequently, do you [263] A. No, but—

* * * * *

A. —I have done it.

Q. You don't have any first-hand information whatever about the standards that white people are required to pass in order to become registered? A. No, but I have been at the precincts, or rather, at the registration places when whites have been registered, but not paying any particular attention.

Q. You don't know how many white persons may have got preferential treatment other than—better than is required by the North Carolina law, do you? A. No, I don't.

Q. Nor do you know anything really about registration outside of Gastonia? A. No.

Q. Your knowledge, such as it is, is limited to the City of Gastonia? A. Yes, but in my position I believe that any irregularities that persons might have run into, especially the Negro race, I think they would have come to my attention.

Q. You believe they would have come to your attention? A. I believe so.

[264] Q. Well, don't you come from Cherryville originally? A. My parents lived there during the time I was in my late teens until 1960, and I visited when I had time out from school.

Q. You have never received a complaint from Cherryville, have you? A. No.

Q: Now, talking about the probability of your getting complaints, of course, a person doesn't always know if he is being discriminated against, does he?

MR. STOTT: Objection.

JUDGE WRIGHT: That is sustained.

* * * * *

Q. Well, one person is not in a position to know, is he, how some other person was treated, if he wasn't there?

MR. STOTT: I object to that.

JUDGE WRIGHT: That is argumentative. Just ask questions.

* * * * *

[265] Q. Have you personally brought any civil rights suits of any kind in Gaston County? A. No, I haven't.

* * * * *

[269] TESTIMONY OF THEBAUD JEFFERS

* * * * *

DIRECT EXAMINATION

BY MR. STOTT:

Q. Would you please state your name? A. Thebaud Jeffers. * * * * *

Q. Mr. Jeffers, where do you live? A. I live at 204 West Walnut Avenue, in Gastonia, North Carolina.

Q. How long have you lived in Gaston County, North Carolina? A. Since 1932.

Q. Were you born in North Carolina? A. Yes, I was born in Person County, * * * * *

Q. You have lived then in North Carolina all your life?

[270] A. Yes, sir.

Q. What is your business, profession, vocation or occupation? A. I am a public school principal.

Q. How long have you been in public school work in Gaston County? A. Since September 8, 1932.

Q. Was your first job as a school official in Gaston County? A. As a school teacher, English and French, at the grade school in Belmont.

Q. In Belmont, North Carolina? A. Yes.

Q. Belmont, North Carolina, is in Gaston County? A. That's right.

Q. How long did you continue to teach in the schools in Belmont? A. From 1932 to 1940.

Q. And then in 1940 where did you go from there? A. I was elected principal of the Highland Union School in Gastonia, North Carolina, in 1940 and I transferred from Belmont to Gastonia.

Q. Now, what school did you teach in when you first [271] started teaching in Gaston County? A. In the Reed School at Belmont.

Q. What grades did that school have? A. That was a union school, from one through eleven then. Of course, later on it became one through twelve.

Q. Right. A. But at that time—

Q. Did you receive your primary education, elementary education in North Carolina? A. Yes. I completed the elementary school in Durham, North Carolina, and finished the Hillside High School in Durham also. I went to the Johnson C. Smith University for my Bachelor's Degree. That is located in Charlotte, North Carolina.

Q. Yes. A. And I received a graduate degree in English from the University of Southern California in Los Angeles.

Q. Now, when you left the Reed School in Belmont and came to Gastonia, that was in the city school system of Gastonia? A. Gastonia city schools.

[272] Q. What grades were included in the school that you became principal of in 1940? A. Well, the grades one through eleven. It is a union school.

Q. How long did you continue to serve as the principal of this Highland school? A. Well, of that particular school, from 1940 to 1955, when the new school was built, and I was transferred to the new school.

Q. Now, you say a new school was built. Would you give us the location and the type of school that you say was built? A. Well, this school was in the northwestern

section of Gastonia. It was built as a junior-senior high school, grades seven through twelve.

Q. At that time did you, in '55, continue to act as the principal of that school? A. Yes, I was.

Q. So you have been in school work in this county, Gaston County since '32? A. That's right.

Q. All right, sir. [273] Now, in 1955 upon the construction of the new school, was that school given the name of Highland High School? A. The name became Highland Junior-Senior High School.

Q. Now, the grades that you had previously had in the other school stayed at the same location that you had served in, in the past? A. Well, the school was divided.

Q. Yes. A. Grades one through six remained at the old site. Grades seven through twelve were transferred to the new school.

Q. Now this school that you now are principal of, is it an integrated school? A. Yes, there are—there are five white teachers and during the year we had an enrollment of six white students, three of whom remained in membership to the end of the year.

Q. Now, the grades of ten, eleven, and twelve that you had under your supervision as principal, were those grades moved from the new Highland School that you have referred to? A. Yes. On April 20, the Gastonia City School—April 20, 1966, the Gastonia City School Board integrated or transferred about 400 students in tenth, eleventh, and twelfth, from Highland Junior-Senior High to the Ashley Senior High, and eight faculty members. [274] And, of course, this left seven, eight and nine, and caused the Junior High to be created at the former site of the Highland Junior—Senior High.

Q. You stated that eight faculty members were moved? A. Yes.

Q. From the Highland school to the Ashley school? A. That is correct.

Q. Were all of these that you refer to, the eight, Negroes? A. Yes, they were all Negroes. We had no faculty desegregation prior to '66-'67.

Q. Now, did I understand you to say, Mr. Jeffers, that you had five white teachers in the school that you have– A. Yes.

Q. –supervision of? A. Yes, last year.

Q. All right, sir. Then are you familiar with the administration of schools in the County of Gaston? A. To some extent, yes, sir.

Q. Are you presently serving in any capacity as an elected public official? A. Yes, I am a member of the Gastonia City Council, [275] elected to a third term without opposition on May 2, 1967.

Q. When were you first elected to your first term? A. May 7, 1963.

Q. Did you have opposition in that election? A. Yes, I did.

Q. Did you have–pardon me. A. There were two persons with whom I competed for the office, one white and one colored.

Q. And you were successful, of course, in that election? A. Yes.

Q. Then the second time did you have opposition? A. I had no opposition for the '65 election and no opposition for the '67 election.

Q. In the 1963 election, Mr. Jeffers, is it your opinion that in order to be elected a member of the City Council that you had to receive a substantial number of the votes from the whites in–

MR. SCHWELB: Objection, Your Honors.

JUDGE WRIGHT: We will take it subject to your objection. Answer the question, sir, please.

THE WITNESS: Yes, sir.

[276] BY MR. STOTT:

Q. In 1932 in the Reed School in Belmont, do you recall what the enrollment of that school was, or approximately? A. Approximately 400, 400 or 500 in all. Now this is a union school, one through eleven–

Q. Yes. A. –with possibly a couple hundred students or 300 being high school, that is, eight, nine, ten, eleven.

This is back in '32. This is prior to 1946 when they added a twelfth grade to it.

Q. Yes. That was a segregated school wasn't it, Mr. Jeffers? A. Yes, it was.

Q. Now, during this period in, say, 1932, when you started into the educational field, was this school available and open for any person of school age who wanted to attend and seek an education? A. Yes, any Negro.

Q. Any Negro. A. Yes.

Q. You are familiar, of course, with the governmental set-up in the City of Gastonia? A. Yes, sir.

[277] Q. Do you recall that some—what year it was that Gastonia received the All-America City Award? A. I believe it was 1965—1964, I believe it was.

Q. Well— A. Spring of '64.

Q. Do you know of your own knowledge, Mr. Jeffers, whether or not that the matter of race relations had some effect or bearing on the city receiving that award?

MR. SCHWELB: Objection, Your Honor. He is speculating—

MR. STOTT: I asked him: Do you know?

JUDGE WRIGHT: Well, he can answer yes or no. Do you know?

THE WITNESS: Yes, sir.

BY MR. STOTT:

Q. Did it have? A. Yes, sir.

JUDGE WRIGHT: We will take it subject to your objection.

MR. SCHWELB: Thank you, Your Honor.

BY MR. STOTT:

Q. At that time could you relate to us, Mr. Jeffers, what steps—well, let's say in 1964 or '65—what steps [278] had been taken in Gaston County to remove any—to remove racial discrimination in every walk of life? A. Well, our public library had been voluntarily desegregated. The golf course had been voluntarily desegregated.

Q. Was that a municipal course? A. Yes.

Q. All right. A. The lunch rooms, many of them, most of them had been voluntarily desegregated.

Q. When you say lunch rooms, do you mean lunch counters, restaruarnts, etc? A. Yes. Some of the chains such as Woolworths, Kresge's, and some of the private ones that were owned—I mean some of the locally owned ones.

Q. There was one exception and that was the Coffee Cup, Dismukes? A. Yes.

Q. All right. That was subsequently segregated I believe, was it not, about 1964? I mean— A. Desegregated.

Q. Integrated. Desegregated. I am sorry. [279] A. That's true, yes.

Q. Yes. Now in the City of Gastonia, do you know whether or not there have been police officers who have served? A. Yes, in 1947, I believe, five policemen were added to the force at the suggestion of a Citizen's Committee, that suggested that Negro policemen—and they were not as widespread throughout the South then as they are now—but this committee suggested that this would be something to be done. They presented it to the City Council and I was a part of that committee and the City Council hired five on the recommendation of this committee.

Q. Yes. Do you know of any racial troubles that we have had in our county? A. No, I don't.

Q. Do you know whether or not any other municipalities in Gaston County have had Negro police officers? A. Well, Belmont has a Negro police officer. Bessemer City has a Negro police officer.

Q. Bessemer City is in Gaston County? A. Bessemer City and Belmont are in Gaston County.

[280] Q. Right. A. I know for a certainty that they do have presently Negro policemen.

Q. Did you at any time serve on the mayor's Human Relations Committee? A. Yes, I was one of the original member of it and I have served as secretary of it from its very beginning in 1961.

Q. Was part of the work of this committee the integration of the lunch counters, restaurants and cafes, Mr. Jeffers? A. This was the first step that this committee took after its organization, was to suggest that the lunch rooms

be integrated and including, of course, at that time a Holiday Inn that had a facility in Gastonia.

Q. You know that there is a YMCA in Gaston County? A. Yes, there is.

Q. That is a Gaston County YMCA? A. Yes, sir.

Q. Do you know whether or not any steps were taken in regard to integration of that facility? A. Well, that facility also was voluntarily integrated without any fighting or anything of that sort.

Q. What about so far as American Legion baseball, for [281] example? A. We have two of our baseball players from our own high school team to participate in the Legion Ball there. Well, we have had more than two.

Q. Yes. A. We have had several to participate in it. This was done without—voluntarily.

Q. Yes. Mr. Jeffers, are you familiar with the Delta Sigma Theta sorority? A. Yes, I am. My wife is a member.

Q. All right, sir. Just relate to the Court briefly, if you will, what activity this group had in regard to the registration of voters and encouragement of people to register and vote. A. Well, this group came to the Citizen's Committee, which may have been mentioned previously, I don't know, an organization that attempts to encourage people to vote and register—register and vote, and asked that they be given permission, if any permission was needed, or certainly their support in securing particularly those young Negroes who had turned 21 since the last election, to urge that they register and vote. [282] And this was the purpose of this group to not only—I think they had beyond that, of course, the purpose of getting all unregistered Negroes to vote. And they put out handbills. There were articles. My wife is a correspondent for a local daily newspaper. There were articles in the paper relative to this effort. And a place was set up at which these people could come and register at the proper time and I understand that a good many did come and register.

Q. Do you know of your own knowledge that white Registrars did visit the homes of Negroes— A. Yes, I do.

Q. —in Gastonia to register— A. On numerous occasions.

Q. Pardon sir? A. On numerous occasions they did that.

Q. You stated that your wife was a correspondent for the Gastonia Gazette. That was the paper you referred to, was it not? A. Yes, that's right.

Q. How long has she been a correspondent, as you— A. Since 1930.

Q. Since 1930? [283] A. Yes.

Q. Does she write a daily column in the Gazette or how often does her column appear in the newspaper? A. Well, most of the news on our side of the town, which is the north side, comes to her because people can get our phone number, and daily there is a column written that is published under her name but without any other designation except whatever headlines they want to give it.

Q. Is that published under the name of Maude Jeffers? A. Maude M. Jeffers.

Q. Right. Now, you say that she has been doing this since 1930? A. Yes.

Q. Was that prior to the time or while you were still living in Belmont that she started? A. Well, no, she was in Gastonia when I came to Belmont.

Q. I see. You weren't married to her at that time? A. No, we didn't get married until 1935.

Q. I see. Has your wife then been active also in the encouragement of the Negroes to register and vote? A. Yes, and using the space that was available to her in [284] the newspaper to carry accounts and articles and any other way that she could be.

Q. Do you know of your own knowledge whether or not she was given freedom to write in her column whatever she elected to do so?

MR. SCHWELB: I object to the form of the question.

MR. STOTT: I asked if she knew.

JUDGE WRIGHT: Do you know of your own knowledge whether or not she was given—do you know, yes or no, please.

THE WITNESS: Yes, sir.

JUDGE WRIGHT: How do you know? A. Well, most—many times I helped her to write the articles and the articles appeared as she had written them and usually I take them to the paper myself, especially during the months—both of us teach school and she has to go a little farther away than I, so I get in my car about 7:30 in the morning and I take the news and many times I have written part of it.

JUDGE WRIGHT: Well, in other words, your suggestion is that what she writes is printed as she has written it, or is it—

THE WITNESS: Yes, verbatim.

[285] JUDGE WRIGHT: Is it sometimes not printed?

THE WITNESS: If there is a space limitation, it is probably postponed but invariably it is printed.

JUDGE WRIGHT: That answers your question. Let's proceed.

MR. STOTT: All right, Your Honor.

BY MR. STOTT:

Now, the Gaston County Citizen's Committee has been mentioned. Are you familiar with that committee? A. I am a member of it.

Q. Now, is that a Gaston County Committee or is that a Gastonia Committee? It is county-wide. We have attempted to involve in it and we have involved in it people from Belmont, Mount Holly, Bessemer City, from as many sections of the county as came, and it is called the Gaston Citizen's Committee.

Q. Have you any persons on that committee or involved, from Cherryville? A. We have had. I think Mr.—I can't remember his name now. Claude somebody in Cherryville has attended our meetings and any [286] other that wants to attend.

Q. Does this committee—we have had testimony, Mr. Jeffers, as to what this committee did and in view of the time I won't ask you to go into it. But I did want to ask you this about it. Does this committee and has this committee worked toward the encouragement of the Negroes

to register, vote, and participate actively in elections throughout Gaston County? A. This has been the real purpose of the committee. It was organized as much for that as for anything else and our concern has been that all Negroes should be registered, that all should vote, and they should vote throughout the county, not just in Gastonia, and our efforts have been expanded in that respect. We have gone throughout the county, speaking in churches. I have spoken in most of the churches in the county and whatever occasion I had to speak invariably it included reference to registering and voting and urging the people to do this.

Q. Have you ever at any of these times, these engagements, or speaking engagements, or other occasions, ever told any of [287] the Negro people that they must be able to pass a literacy test in order to register or not? A. No, that has not been a great concern of ours because it has not been—there has been no reason to be concerned about it.

Q. Why do you say that, Mr. Jeffers? A. Because it has—the people were not required to pass it or anything for the most part. This has just not been a problem to consider.

Q. Do you mean to say that it has not been a problem in getting the Negroes registered? A. I haven't observed—

Q. A deterrent? A. I have not observed it as a problem or deterrent in any way to getting them to register.

Q. Do you know whether or not this test has been used for the purpose of discrimination against the Negro?

MR. SCHWELB: Objection, Your Honor.

JUDGE WRIGHT: He asked: Do you know? Do you know?

THE WITNESS: I know of no incidents where it has been used.

JUDGE WRIGHT: We have it subject to your objection.

* * * * *

[287A] Q. Mr. Jeffers, do you remember or do you know whether or not a letter was sent to the school that you are principal of by Mr. Davis, as Chairman of the Board of Elections, for distribution to the school children? A. We received—

Q. Pardon? A. We received possibly 800 or 900 copies of a letter to be given to each school child and we had at that time over 800 students enrolled in our school. We gave to each child through the home room teacher a copy of this letter to take home. In addition, we had a special assembly of all students to urge that they take this message home to their family. Now, this I think you have reference to when we threw out the old books and started to–

Q. Yes. A. –re-register.

Q. That was in 1962. A. Yes. [288] All of the schools cooperated and certainly we did our part because we had many, many high school students and we felt that they could take the message home in a very effective way.

And so we not only gave out the letters but we had a special assembly to urge them to do that. We told our faculty members to emphasize this in their relationships each day with their students, that this was an important thing in the lives of the people of our community and that they should stress it.

Q. Yes. Did you also receive one from Mr. Hollowell as Chairman of the Board of Elections– A. Yes.

Q. A similar type letter? A. Yes.

Q. Did you take the same steps in regard to that as you have just told us about? A. We followed through with both.

Q. Yes. Do you know whether or not any other schools were constructed–that is, new schools–were constructed prior to 1964 or between–let's say, between 1955 and 1964–other [289] than the Highland school which you have already testified about? A. Well, the Hoffman, H-o-f-f-m-a-n, Road Elementary School was built by the Gastonia City Schools as an elementary school, grades one through six. I have forgotten the year but it was sometime within that time.

Q. You mean that two entirely new schools were built from '55, say, to '64? A. Yes.

Q. All right, sir. Do you know whether these were built, at that time or the time they were used, as segregated schools? Is that correct? A. That's right.

Q. Do you know whether or not there were any white schools built in the county during that period? New schools I mean, new construction. A. I think the Bessemer City High School was built. A little later on possibly the Belmont High School was built.

Q. Was that after '64 or before? If you know. A. I don't know. It was—I think it was after '64.

Q. All right. [290] A. The Belmont School. The Gardner, * * * * * Park Elementary School was built during this time that you are talking about also.

Q. That is an integrated school, is it not, the Gardner Park School? A. Well, the faculty is integrated.

Q. The faculty is integrated? But the school itself, so far as you know, does it have any Negro people— A. It is a neighborhood school and—

Q. I see. A. —no Negroes live in that neighborhood.

JUDGE ROBINSON: The period again is 1955 through 1964?

MR. STOTT: I was saying '64, Your Honor.

JUDGE ROBINSON: All right.

BY MR. STOTT:

Q. Well, the Ray Junior High is a part of the city school system, isn't it? A. Yes, sir.

Q. Would you say that that is a neighborhood-type school? A. Well, it is now because the students who live in [291] that district for the most part attend there. There are some outside the district. Gastonia has a district. It is zoned, but you may transfer from one zone to the other.

Q. And attend any school that you elect to attend? A. That's right.

Q. That school is integrated? The Ray Junior High, I am talking about. A. Four of our former teachers are presently employed in the Ray Junior High.

Q. Four of your former Highland school— A. That's right, former Highland school teachers.

Q. Mr. Jeffers, are you familiar with the Cherryville school system— A. Yes, sir.

Q. —to some extent? A. Yes, sir.

Q. Now, the Cherryville School District is a separate district from the Gastonia system— A. And from Gaston County.

Q. In other words we have three separate school systems in the county? A. Right. That is correct.

[292] Q. For the record, that is the Cherryville City School System? A. That's right.

Q. The Gastonia City School System? A. That's right.

Q. And the County, Gaston County School System? A. That's right.

Q. Now, do you know which of these three school systems was the first to integrate in Gaston County? A. Well, total integration took place in the Cherryville schools, but there is no such thing any more as a Negro school in Cherryville or a predominately Negro school in Cherryville.

Q. Now, do you know when Cherryville totally integrated? A. I believe it was the beginning of the '65-'66 school year.

Q. Now, do you know whether or not just prior to this time any new schools had been built in the Cherryville School System? A. The Cherryville Junior High was built and open at the beginning of the '66-'67 school year. It was under construction at that time.

Q. All right. A. And two years before that, the former John Chavis, [293] C-h-a-v-i-s School, which had been built following a fire which destroyed the original structure and, of course, this building, when integration took place, this building became the East Elementary School, and was totally integrated with white and colored children.

Q. Now the John Chavis School was a Negro school— A. Yes, it was all Negro prior to this time.

Q. Do you recall what year it was constructed, the new school, John Chavis School, was built? A. It must have been—it must have been opened about '63 or '64. I just don't remember the year. I remember the incident.

Q. Yes. A. And the fact that it was dedicated, big program and all that.

Q. Now, upon integration of the schools in the Cherryville system was the John Chavis School—or is it still used?

A. It is still used. Its name has been changed. It has become the—I think it is called the East Elementary School. It is located in a predominately Negro section of [294] Cherryville, but I suppose maybe 50 percent of the enrollment is white.

Q. At the present time? A. At the present time. The faculty members were integrated, including the principal, who was given a special title and a special assignment in the new set-up.

Q. All right. When you say the principal, you mean the man who was principal of the John Chavis School— A. Of the John Chavis School.

Q. Do you know his name? A. James A. Arnold, A-r-n-o-l-d.

Q. You say he was given some special title or job. What was that job? A. Director of Federal Programs. This means that he is in charge of the ESCA, Elementary Secondary School Act programs and any others that might be, and his salary was not reduced.

Q. As— A. Probably it was raised, I don't know.

Q. I see. Now, who had the authority, if you know, to appoint [295] him to this position? A. The School Board and the—

Q. What School Board? A. Of the Cherryville City School System.

Q. Do you know of your own knowledge that he is still serving in that capacity? A. Yes, and I understand quite satisfactorily from some friends that I have in Cherryville.

Q. Now, do you know whether or not any problems or trouble from the integration or has developed from the integration of the Cherryville School System?

MR. SCHWELB: Object to the form of that question.

JUDGE WRIGHT: Do you know? Do you know whether or not?

THE WITNESS: I know of none, Your Honor.

JUDGE WRIGHT: We will take it subject to your objection. * * * * *

BY MR. STOTT:

Q. The new school that you mentioned in Cherryville, is that just for the three grades of ten, eleven and twelve? A. No, sir. That is a junior high. That is seven, eight and nine.

[296] Q. I am not talking about the John Chavis School now, I am talking about the new— A. Well, the new junior high is seven, eight and nine. I was in it less than a month ago to attend a meeting.

Q. All right. Now the pupils that were formerly in the John Chavis School, were they integrated into the Cherryville High School? A. The seventh, eight and ninth grade students were transferred to the Cherryville Junior High, this new school.

Q. Yes. A. And the principal, of course, was formerly associated with the school system in Gastonia.

Q. The principal of that— A. Of the Cherryville Junior High School.

Q. Yes, I see. Now, Mr. Jeffers, you have been a former resident of Belmont, North Carolina. Are you familiar with what was done in regard to integration in the Belmont schools which is a part of the county school system? Is that correct? A. Yes, sir. I am familiar with the fact that the Reed School in which I first worked when I came to Belmont was at the beginning of the '66-'67 term discontinued as a [297] separate Negro school. All the students were transferred to the elementary schools of Belmont, formerly all white; the junior high school, formerly all white; and the senior high school. All the students were transferred and this school was discontinued. The faculty members were similarly distributed throughout the system.

There were too many to be absorbed by Belmont alone so I think one or two maybe are teaching at the Hunter Huss High School, which is a part of the Gaston County School System.

Q. The Hunter Huss High School is located almost within the corporate limits of Gastonia? A. It is in the corporate limits.

Q. It is. A. But it is a part of the county system.

Q. Of the county school system. Now, this Hunter Huss High School is an integrated school? A. Yes, sir, staff and students.

Q. But now if I understood you correctly, Mr. Jeffers, you said part of the teachers from the Belmont Schools were [298] distributed throughout the Gaston County School System? A. That's right.

Q. And some were— A. Some were working at Ranlo and some were working at Hunter Huss. Many of them were working in the system right in Belmont in the other elementary, junior high and senior high school.

Q. Now, do you know anything about the principal? What about the principal of that Reed School? A. Well, he was transferred to another principalship. The principal of the Mount Holly Elementary School died during the year and at the conclusion of this school year '65-'66 he was transferred to the principalship of the Mount Holly—well, I believe it is called Rollins, R-o-l-l-i-n-s—Elementary School in Mount Holly.

Q. Mount Holly is also in Gaston County? A. Yes, part of—

Q. That is a municipality? A. Part of the Gaston County system of schools there.

Q. Are you familiar with the Schools in Stanley, North Carolina? A. Yes, sir.

Q. And Stanley is a municipality in Gaston County? A. Yes, sir.

[299] Q. Can you tell us anything about the schools in Stanley? A. The one Negro school, formerly all Negro school, was discontinued as an elementary school from one through six, and it became one of the schools in a parent system. The ninth grade—all ninth grade students, white and colored, were transferred to the school. And the building is relatively new. It is a very fine building. It, too, is located in the Negro district of Stanley. And it is a small school, I think abut four teachers and a principal. These—the teachers were—some were moved into the white Stanley Elementary School and—

Q. You mean the Negro teachers? A. The Negro teachers from the Stanley Negro school were moved into the white system, the white school, and the white teachers, four white teachers were assigned to this all Negro—formerly all Negro school, but the Negro principal was retained.

Q. What is his name? A. His name is John Allen Foster.

Q. But this principal—you say all of the teachers [300] that work under his supervision are white? A. They are white, yes, sir.

Q. Well— A. And his student body is probably predominately white because there are more white ninth graders in Stanley than there are Negro ninth graders.

Q. Now, Mr. Jeffers, are you familiar with the Dallas, North Carolina, schools? A. Yes, sir.

Q. That is a part of the Gaston County system, isn't it? A. Yes.

Q. Dallas is a municipality in Gaston County, isn't it? A. Yes.

Q. What do you know about schools or school constructions and the integration of the schools in Dallas? A. Well, Dallas still has a Negro elementary school which is integrated in staff only and not in student body as of this date.

But all the high school students in Dallas or in the Dallas school district, all Negro high school students, all Negro junior high school studen s are now attending the formerly all white junior and senior high school in Dallas. [301] And there is faculty desegregation also in the white schools and in the Negro schools.

Q. Now Bessemer City, North Carolina? A. Yes, sir.

Q. That is a municipality in Gaston County? A. Yes, sir.

Q. Can you tell us about the schools—first, strike that, please. The Bessemer City schools are a part of the Gaston County School System, aren't they? A. Yes, that is correct.

Q. And can you tell us about the school set-up in Bessemer City? A. Bessemer City had one formerly all Negro

school which at the beginning of the '65-'66 session was discontinued and it was from one through six. The school was discontinued. The teachers transferred to other schools formerly white in Bessemer City and all students were transferred.

The principal was made assistant principal of, I believe, the West Elementary School in Bessemer City, and he continues to serve in that capacity.

The high school students, some of them are in the [302] Bessemer City high school

MR. STOTT: May I have just one moment, Your Honors? If Your Honors will bear with me one moment, please.

BY MR. STOTT:

Q. Mr. Jeffers, the one other municipality that I can recall now in Gaston County is the town of Lowell, L-o-w-e-l-l. Lowell schools are a part of the Gaston County system, are they not? A. Yes, sir.

Q. Are you familiar with the schools in Lowell, Mr. Jeffers? A. Yes, sir.

Q. Would you tell us, please, what has occurred in regard to the Lowell schools? A. The Lowell Dora Humphrey Elementary School is the Negro school in Lowell. It has been integrated as far as the faculty is concerned, but I don't believe—I don't know of any white students that are attending this. It is in a predominately Negro section. There is integration of faculty and students at the Lowell Junior High School level and the Senior High School level.

[303] Q. All-right, sir. Now, we have one other municipality also which has recently become an incorporated town, Ranlo. That is in Gaston County? A. That is in Gaston County, and part of the Gaston County School System. It is integrated, both faculty and student body.

Q. Mr. Jeffers, have you in your work with the Gaston County Citizen's Committee and other committees that you have served on, have you had or found it hard to get the Negro people to go register or have they been cooperative

in doing that? A. Well, I would say that they have been most cooperative in doing so. A great effort has been made to acquaint them with the importance of the vote and the fact that they should–

Q. Have you– A. –vote.

Q. Have you had dealings with the election officials of Gaston County, that is, the Chairman of the Board of Elections and some of the Registrars of Gaston County? A. Yes, some of them I have.

Q. Those that you have had contact with, have you found [304] those officials to be cooperative and ready to assist in the registration of Negro people? A. I have found no hesitancy on their part to assist and help in any way that they could. As a matter of fact they have suggested that we urge our people to come out and register.

* * * * *

CROSS-EXAMINATION

BY MR. SCHWELB:

Q. Mr. Jeffers, you have testified about the integration of various schools in the various areas of Gaston County. Now that took place all in the last two or three years, did it not? A. Yes, sir.

Q. What is the voting age in North Carolina? A. 21.

Q. So that the persons who are now eligible to vote didn't have the benefit of integrated schools at all, did they?

MR. STOTT: Objection.

JUDGE WRIGHT: I sustain the objection. It is argumentative and obvious, too.

[305] BY MR. SCHWELB:

Q. Well, they didn't attend–what I intended to say was that the persons now eligible to vote by age did not attend integrated schools in Gaston County?

MR. STOTT: Objection.

JUDGE WRIGHT: It is obvious. Let's go on to something else. It is obvious. If they just started last year or the year before people 21 years old didn't attend.

* * * * *

BY MR. SCHWELB:

Q. Now you testified that the school at which you teach is integrated—I think you said that there were six white students and 300 Negro students? A. Six enrolled.

Q. Did some of those six thereafter leave? A. Three left.

Q. That left three after that? A. Yes.

Q. Now, how many white— A. Well, they transferred. Let me say this. Some moved away. One girl moved away to another town. The others probably—I don't know what happened to them.

[306] Q. How many white students were originally zoned into that school? A. About 300.

Q. And the remainder transferred to other schools rather than attend that school? A. Yes, they chose—you see, they were already in other schools, but when the zoning—when the schools were all put into zones, they chose to remain in their particular schools.

Q. Now, you testified that the literacy test was of no great concern. A. We haven't found it so.

Q. Well, did you know that Negroes had been rejected on the literacy test? A. I haven't seen any who have been rejected.

Q. Well— A. I am not acquainted with any who have been rejected.

Q. You testified that—at length about Cherryville, the town of Cherryville. A. Yes.

Q. Do you know a man by the name of John Patterson there? [307] A. I am not sure that I do.

Q. I take it you were not aware that there is testimony in the record that he was advised not to bring any Negro illiterates to register?

MR. STOTT: Objection.

JUDGE WRIGHT: He said No, he didn't know about it.

* * * * *

BY MR. SCHWELB:

Q. Is it your testimony that you don't know of any occasion in which a Negro was rejected for illiteracy? A. Not anywhere in the county that I know of.

Q. You don't— A. I am speaking for myself.

* * * * *

[308] Q. Do you know whether the literacy test was waived for white people? A. No, I do not.

Q. You have not personally inspected the voting records anywhere, have you? A. No, I have not.

Q. You have not made any independent inquiry as to the waiver of the literacy test for any persons? A. No, I haven't.

* * * * *

A. The literacy test has not been a concern.

Q. Well, you don't—do you know that? A. Yes.

Q. And if you don't know whether Negroes have been rejected under it or not, do you still know it? A. I would know that, if some complaint came up sooner or later, I would hear about it—

Q. If you— A. I might even be called. I get calls all over the county.

Q. Well, let's clarify that. Is it your testimony that if any Negro had been [309] turned down under the literacy test, you would know about it? A. I might have known about it. I don't know whether I would have or not, but I expect I would, because our Citizen's Committee is concerned with the whole county and sooner or later we would have gotten a complaint.

Q. So it is your belief that if you haven't heard about it, it didn't happen? A. Well, I would say it is likely that it might not have happened. I don't know. I may not have heard about it but the chances are I would have. Let me say it that way.

Q. Well— A. Because this is our business. I mean the Citizen's Committee; that is our business to get people registered.

Q. Well, let me ask you then, Mr. Jeffers, specifically whether you have ever talked to Mrs. Burch in Mount Holly? A. No, I haven't.

* * * * *

[310] Q. Well, do you know whether a Mrs. Hyde was ever rejected for registration? A. I don't know.

Q. Do you know whether a Mr. Thornton Stringfellow was ever rejected for registration? A. Are you talking about Mount Holly?

Q. Not only that. No. Mr. Stringfellow is in, I think, South Gastonia. A. No.

Q. You don't know?

* * * * *

THE WITNESS: No, I do not know.

Q. Do you know whether a Mr. Rice was ever rejected? A. No—

Q. —for registration. A. No, I don't know that.

Q. Do you know whether Doctor Floyd was told by a [311] representative of the Board of Elections that a Negro had been rejected for registration several times for illiteracy? A. No.

Q. Now, I believe that you testified that you encouraged Negroes to register and vote? A. Yes, we did.

Q. At the time that you encouraged them, didn't you participate in passing out copies of the oath and other aids to help them pass the literacy test? A. Yes.

Q. So you were aware that they had to pass something? A. Yes, at one time.

Q. Prior to the Voting Rights Act? A. Yes.

Q. And now you testified that you knew lots of cases in which white Registrars visited Negro homes. I wonder if you would tell me whether that was during some drives in the City of Gastonia? A. Yes, when a special effort was being made to get these people to register.

Q. Well, at whose home were you present when white Registrars came to his home to register? [312] A. Well, Mrs. Earl was one on West Allison Avenue.

Q. Was she organizing a drive where Negroes were being registered at her home? A. She consented to have the Registrars meet in her home because many of our people work and they wouldn't have time to go to the polls—I mean the registering place during the hours it was open, and arrangements were made to sort of bring the Registrar to the people.

Q. She was already registered, wasn't she? A. Yes.

Q. So that her home was being used as a place where other Negroes could register? A. Yes.

Q. That was in the City of Gastonia, was it not? A. That's right.

Q. Now, can you name any Negro in Cherryville at whose home registration took place? A. No, I can't do that.

Q. Or outside Gastonia, for that matter? A. No.

Q. Do you have any idea what the percentage of Negroes in Cherryville is that is registered? A. No, I don't know that.

[313] Q. Now, you also testified that you knew of no racial trouble in Gaston County at all? A. What do you mean by racial trouble?

Q. Well, that was the question that Mr. Stott asked you. What did you mean when you said you knew of no racial trouble? A. Racial—if you are talking about disturbances of any kind, I don't know of any.

Q. Well— A. If you mean fighting the police—

Q. Well, let me ask you this. A. —or if you mean resisting duly constituted authority.

Q. Let me ask you more specifically. Aren't you from Belmont originally? A. Not my home. I just worked there. My home is in Durham. I was born in Person County. I grew up in Durham, North Carolina and started my career in Belmont.

Q. Do you know members of the Negro community in Belmont? A. I knew just about all the Negroes.

Q. You know Greer Stowe, don't you? * * * * * A. Yes. He was one of my students once upon a time.

Q. Now have you talked to Mr. Stowe in recent times? [314] A. I have seen him quite frequently. In fact, I spoke to his church group two Sundays ago.

Q. Well, isn't it a matter of common knowledge in the community that he suffered all kinds of reprisals for integrating the school there? A. I had not heard of it.

Q. You had not heard of that? A. No, sir.

Q. Do you know Marvin Anthony? A. I don't believe I do.

Q. Or his son, Ricky Anthony? A. No.

Q. Now, you testified to considerable knowledge of the schools outside Belmont also. Did you know that the Ku Klux Klan had visited one of those schools in robes in the last two years?

MR. STOTT: Object.

JUDGE WRIGHT: That is overruled.

* * * * * *

[315] Q. One of the schools, one of the integrated schools wearing robes, in Gaston County? A. No.

Q. You haven't heard anything like that? A. I don't recall that I did. I don't know where that could have been unless it was Cherryville.

Q. Now, you mentioned something about the All-America Award. Who gave out the All-America Award? A. Look Magazine and the national J.C. organization. National J.C.'s—two organizations sponsored it. Look Magazine and the J.C.'s.

Q. Well, now, you don't work for Look Magazine or the J.C.'s, do you? A. No.

* * * * *

A. Not a member either.

Q. They don't discuss the operation of their minds with you, do they? A. No.

Q. So you don't know what went into their minds when thay gave Gastonia the All-American Award, do you? A. I know what they said.

[316] Q. What they told you? A. Yes.

Q. That is all you know. A. Yes.

* * * * *

A. Look sent two representatives, incidentally, for your information, Look Magazine sent two of their staff members to Gastonia to interview Negroes and white and everybody else concerned, to get a picture, and they went all over the Negro community. They met with a group of us in our Youth Center so they have a pretty good idea themselves.

Q. Did you tell the representative from Look Magazine approximately the same thing as you have testified to today? A. Yes.

Q. Now, you have testified, Mr. Jeffers, about the educational system in Gaston County. And I would like to ask you whether you have made any study of the disparities between the—the possible existence of disparities over the past 50 years or so between the white and Negro schools? A. Well, there have been some differences. They were pretty obvious. [317] I can detail some of them for you, if you want me to.

Q. Well, why don't you briefly do that. A. Well, there was a difference in facilities, a difference in libraries. We are talking about, say, from the beginning when I started in 1932.

There was a difference in lavatory facilities. There was a difference in the construction of buildings, that is, special rooms.

When I say library facilities, I mean books and even a room big enough for them. There was a great difference in that at that time. We are talking about the early years.

Q. That is the 1930's and the 1940's you are talking about. A. Yes, this is what we are talking about.

Q. Of course, prior to 1930, you don't have any personal knowledge, is that true? A. Well, I was a student prior to that, so I was involved in it.

* * * * *

A. I don't know how you look at it.

[318] Q. The differences to which you have testified were as great when you were a student or greater than when you were a teacher, weren't they? A. Well, I went to a school that was pretty well equipped in Durham, North Carolina.

Q. You went to Durham? A. Yes. I went to junior high and senior high in Durham and the school was very well equipped with chemistry labs, physics laboratories, general science, typing room. I remember some of those as special rooms. The gymnasium. So that maybe I was fortunate.

Q. Well, just for clarification, this school was not in Gaston County, is that right? A. This was in, no, this was in Durham County, North Carolina.

Q. Now, returning to this question of no racial trouble, was it your testimony that the Coffee Cup is the only place that you know of in the county that did not comply with the public accommodations law? A. It is the only one in Gastonia.

Q. Well, what about outside of Gastonia, in the other parts of the county? A. Well, there was compliance as far as I know.

* * * * *

[319] A. Here again there were no complaints except from this one place.

Q. Well, you never received any complaints in your committee about the Triple H Restaurant in Cherryville? A. No. I have eaten there.

Q. You have eaten there? A. Yes.

Q. When did you eat there? A. Recently.

Q. How recently? A. A month and a half ago.

Q. Did you know that substantial negotiations were had between the Department of Justice and that restaurant to enable you to eat there? A. No.

Q. Did you know that complaints about the Triple H Restaurant were received in the Department of Justice— A. No—

* * * * *

[320] Q. Of course, prior to your eating at the Triple H Restaurant were you aware of any difficulty the integrated football team at Cherryville had there? A. No, sir.

Q. Have you eaten at any other restaurant in Cherryville which is primarily for white people? A. This is the only one that I have been in.

Q. Did you discuss—have you ever discussed the question of integration of public accommodations with any Negroes in Cherryville? A. No, I haven't.

Q. You know that attorney Chambers brought a suit against the public accommodation in Gaston County for

failure to comply with the equal accommodations act, don't you?

* * * * *

[321] Q. Do you know whether he did or not? A. No, I don't.

Q. Do you know who Mr. Chambers is? A. Yes, I know him.

Q. Now, with respect to your wife's writing in the Gastonia Gazette, she writes basically a Negro news column, doesn't she? A. Yes. But sometimes it is not that. But largely it is. For the most part it is news that is from our section of town.

Q. Now, do you know how many Negroes are employed by the Gastonia Gazette in non-menial tasks? A. There is only one that I know of at the moment. I know an effort has been made to secure a full-time staff member. I have written at least two schools of journalism for the the Gazette and I have referred answers, their letters, to Mr. Jimmy Atkins, the publisher of the Gazette.

Also I had contact with two other people. One worked for the—I believe, the Baltimore Afro-American. And another one, I have forgotten which paper—maybe it is out of Durham, all with an effort—Mr. Atkins asked me to help [322] him find a qualified Negro person to go full-time on his staff.

Q. Who is the Negro who works there now besides your wife? A. This is a Negro in the press room.

Q. He is from Belmont, isn't he? A. Yes.

Q. A young man? A. I am trying to think. Oh, what is his name?

* * * * *

Q. Mr. Schultz, isn't it? A. Yes, that's right. Theron Schultz. I should know it.

Q. And as far as you know— A. One of my students.

Q. As far as you know have there been other Negroes who have applied for press room jobs in that— A. Not that I know of.

Q. As far as you know he is the only one? A. So far as I know he is.

* * * * *

[323] REDIRECT EXAMINATION

BY MR. STOTT:

Q. Mr. Jeffers, I show you a paper writing which is plaintiff's Exhibit A. It has been identified as the type of written test that is being used—was being used prior to the Voting Rights Act of '65. Would you take this and read the three sections, Article IV, Section 17; Article VII, Section 8; and Article XIV, Section 6, and read that, please—not aloud, read it to yourself and then I want to ask you a question about it.

* * * * *

Q. Mr. Jeffers, do you have an opinion as to whether or not the schools in 1932 had sufficient facilities and were equipped to teach a person to read and write well enough to be able to pass that test or to write any portion of the words in the three sentences that you see there? A. The Negro schools have been basically concerned—I mean in the early years—with teaching reading, writing and arthimetic.

[324] All of our schools, just about—I think all of them would have been able to teach any Negro child to read and to write so that he could read a newspaper, so that he could read any simple material that didn't have any foreign words or words of foreign extraction in them.

This has always been true and I don't think that this was ever an argument anywhere, except that maybe the facilities were different. But they have been basically able to teach this and this is what they have done.

Q. Yes. It is your opinion then that this test could be just copied or written as was required prior to the time we were placed under the '65 Voting Rights Act. Is that your opinion that a person could do that or— A. Yes, I am certain.

Q. The schools were sufficient so they could do that? A. Yes, sir.

* * * * *

[325] RECROSS-EXAMINATION

BY MR. SCHWELB:

Q. Do you know what percentage of the Negro population is shown by the census to be illiterate? A. No.

MR. STOTT: Objection.

* * * * *

JUDGE WRIGHT: Let him answer.

THE WITNESS: I am not familiar with the percentage. (By Mr. Schwelb:)

Q. From your general knowledge of the county, do you believe that a greater percentage of Negroes is illiterate than white people?

MR. STOTT: Objection.

JUDGE WRIGHT: We will take it subject to your objection.

* * * * *

Q. If you know. A. I don't know. I would guess that perhaps that might be true and yet there are a lot of illiterate whites in Gaston County.

Q. Do you know any illiterate white who is not registered? A. No, I am not—I am not familiar with that—with [326] that answer. I don't have an answer to that question.

* * * * *

MR. STOTT: Your Honors, that concludes the witnesses we have now, but we have the depositions that we will offer into evidence.

JUDGE WRIGHT: Have you had an opportunity to make this list of your exhibits?

MR. STOTT: * * * * * I had a list of exhibits typed prior to trial. . . * * * * * But I will have to revise that list and submit it later.

JUDGE WRIGHT: Can you make it in the next week.

MR. STOTT: Yes.

JUDGE WRIGHT: Just file it in the record.

* * * * *

[327] JUDGE WRIGHT: In connection with it and we will keep the record open for that purpose.

* * * * *

[328] MR. SCHWELB: The depositions are in eleven volumes. They are interspersed, plaintiff's and defendant's. I think it might be simpler for everybody concerned if we just call them Volumes 1 through 11 of the depositions.

JUDGE WRIGHT: Who would be offering them?

MR. SCHWELB: Well, I think it appears in each one—who it is offered by. You see, they have been numbered consecutively that way up to now.

* * * * *

[329] JUDGE WRIGHT: What should be on the list of exhibits is the trial number of the particular deposition and then a reference to the name of the deponent and the volume in which the deposition will be found. Each deposition will be a separate exhibit irrespective of how many depositions may be in one volume.

* * * * *

(Judge Wright) You may proceed.

MR. SCHWELB: Your Honors, we have no oral testimony to present. All our case has been put on by pretrial depositions. As you know we have no subpoena power to bring the witnesses here. I had evidence to introduce and Mr. Stott and I [330] entered into a further stipulation in respect to some registration figures which I would like to make known to the Court.

I have here a sheet of paper which I will number in connection with our depositions, which represents the materials furnished to us by Mrs. Musard, I believe from the Gaston County Board of Elections office, and which shows a breakdown of registration by race, by precinct as of May 6, 1966.

I believe Mr. Stott is stipulating with me that that sheet of paper is what it purports to be and we will number it consecutively in our proof.

Other than that, all we want to do, Your Honors, is to present our documentary evidence and our depositions.

* * * * *

JUDGE WRIGHT: You have a week to do it. We gave [331] a week to the other side. I take it then you rest?

MR. SCHWELB: We rest on this documentary proof, yes, Your Honor, and the depositions. We have no live witnesses to call.

* * * * *

DEPOSITION OF TOM ERVIN LOUDERMILK

MR. SCHWELB: This is Mr. Tom Ervin Loudermilk. He is white. May the record show that this witness, according to records kept by the Gaston County Board of Elections, registered on April the 25th, 1962, and he was registered by Registrar Helms in Precinct 20.

BY MR. SCHWELB:

Q. Mr. Loudermilk, would you state your full name for the record, please sir? A. Sir? My full name?

Q. Yes, sir. A. Tom Ervin Loudermilk.

[3] Q. What is your age, Mr. Loudermilk? A. Fifty-six. I was born May the 8th, 1911.

Q. And where do you live? A. I live in Belmont, Todd Street, 114.

Q. And is that in Gaston County, North Carolina? A. Yes, sir.

Q. Are you registered to vote in Gaston County? A. Yes, sir.

Q. Now, how much education have you had, Mr. Loudermilk? A. Well, I went a little bit in the first reader.

Q. Why did you have to stop going to school, Mr. Loudermilk? A. I had to to to work.

Q. Were you quite young when you had to go to work? A. Well, just bearly big enough to do a little howing or maybe to hold a plow.

Q. Do you pay taxes, Mr. Loudermilk? A. Yes, sir.

Q. How long have you been paying taxes? A. Well, I've been paying them ever since I was twenty-one years old.

Q. Whose home do you live in, Mr. Loudermilk? A. What home?

Q. Whose home do—do you own your home? A. Yes, sir.

[4] Q. Have you been a good citizen in Gaston County all your life? A. Yes, sir. I got a clear record in Gaston County.

Q. Now, how long have you been voting in Gaston County, Mr. Loudermilk? A. Well, I think we come up here and worked a little while and went back. I come up here I believe first in '41. Then we come back in '45, I believe it was, and stayed. And that's when they come to me. I give him what little taxes I had down in Georgia, the year I come up here, and they come to me and told me I would have to pay again, and I told them I had a receipt. He said—Mr. Coston up in North Belmont, he said for me to go down and see Mr.—I don't remember his name down in Belmont right offhand—Mr. Stowe I believe it was at that time. And I told him he could write to Georgia and see and said it would tell him all about it, and he said for me to just forget it; just go ahead and start in next year, so that's what I done.

Q. Mr. Loudermilk, how many years approximately have you been voting in Gaston County? About twenty years or ten years or three years or what? A. I figure around that. About twenty years. I figure [5] somewhere in the neighborhood of that. I believe that's when I first registered. But I wouldn't say just for sure right offhand.

Q. When you first registered, Mr. Loudermilk, did you have to take any kind of a test? A. No, sir, I didn't take any kind. All a man asked me was my name and address and I signed my name down at the bottom.

Q. You didn't have to write any part of the constitution? A. No, sir. I just had to write my name.

Q. Do you know how to write your name? A. Yes, sir.

Q. Can you read a little bit? A. Well, I can read a few words.

Q. Now, do you remember when everybody had to re-register in Gaston County, about in 1962? A. Yes, for a Helms boy down at the mill. I signed my name down there.

Horace Helms, I believe, is his name. I believe that's his name, if I ain't badly befooled about it.

Q. I would like to show you a piece of paper here and ask you whether at the bottom of the piece of paper that is your signature? A. That's my signature right there.

MR. SCHWELB: I would like to introduce that, [6] please, as defendant's exhibit one to this deposition. A. That's my crooked writing but—

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MR. SCHWELB: It is stipulated by counsel for plaintiff and the defendant that defendant's exhibit one can be introduced in place of the original record and—

MR. STOTT: It is stipulated and agreed that a photostatic copy—go from there.

MR. SCHWELB: Of the original registration form—

MR. STOTT: Of the original registration form could be introduced into evidence as defendant's exhibit number one to this deposition.

* * * * *

Q. (By Mr. Schwelb) Now, when you signed your name to this little registration form, Mr. Loudermilk, did you have to take any reading or writing tests at that time? A. No, sir. I just wrote my name, is all I done. Mr. Horace Helms brought the book down there and I signed my name and that's all I done.

MR. SCHWELB: Now, I would like to introduce as defendant's exhibit two to this deposition, please, [7] a sheet of paper on which is a passage written both in block capitals and in ordinary writing taken from a section of the Constitution of the State of North Carolina, and I would like to ask the reporter to mark it as defendant's exhibit two.

Q. (By Mr. Schwelb) Mr. Loudermilk, I would like you to take your time, please, take as long as you want, and read to me from this top passage here as many words as you can read, please. A. For. S-h-a-l-l. B-e. Be. A-b-l-e. To. For. And. Any. Of. The. In. The. L-a-n-g-u-a-g-e. You want me to read it on down here.

Q. No. The first passage is sufficient. You read for the reporter all the words you knew how to read, didn't you? A. Yes, sir.

Q. You have never been required to—in order to register to read a passage like that? A. Huh?

Q. Nobody has ever asked you to do that when you have registered? A. Never have, no, sir.

Q. Mr. Loudermilk, have you voted? A. I voted up until this last election in the city elections. I vote every year in the county election. After [8] they began to talking around that if you couldn't read something about the constitution, I didn't go down to ask any question and didn't go down to re-register after they—

Q. You're talking about the city elections? A. That's right.

Q. But you have voted in the county election and the national election each time? A. That's right.

Q. When you would go to vote in the national election or the county election, did somebody help you with the ballot? A. Me and my wife goes in there and works on it. See, she's education. Of course, I know pretty well all the names when I get ready to go down. I get the names of all of them and I study them up, and I do my—generally my own marking.

Q. She's got more education than you have? A. Yes, sir. Sure, she's got a good education. She learnt me mostly what I already know now. Of course, I know right from wrong. I'm not dumb. I know right from wrong and I know when I'm doing the right thing for my country.

Q. Was it your idea to quit school or did you have to quit. A. I had to quit.

[9] Q. Would you still like to be able to vote in the future? A. Sure. I'm going to vote. If they'll let me sign my name, I'll re-register in the city election, but if I have to go through a whole lot of other stuff, then I'll stay away. I won't push myself on nobody, brother. No, sir.

* * * * *

BY MR. STOTT:

Q. Mr. Loudermilk, you've lived in Gaston County then since about 1945? A. Yes, sir.

Q. And since you have lived in this county you have taken an active part in the elections? A. Yes, sir. I've tried to vote for the man who I thought could do my country good.

Q. Before you would go to vote you would study the candidates for office? A. Yes, sir. I'll tell you, children, I try to live right.

Q. Just answer my questions. A. Go ahead.

Q. When you did go to vote, of course, you marked your own ballot? A. Sure. We go in there and I pronounce the name and I mark it the way I wanted it.

Q. Would you know the names of the people you wanted to vote for? [10] A. Would I know them personally?

Q. Would you know about them, something that you had read about them or studied about them? A. Yeah. I just heard of them.

Q. Were you able to read the names on the ballot when you would go in to vote? A. Not clearly, no, sir.

Q. Did you understand— A. I understood the names but I didn't know them personally.

Q. Were you able to read the name of the person you wanted to vote for? A. Well, I would spell it and she would tell me—pronounce it for me.

Q. You couldn't look at it on the paper and tell for sure that was the man you wanted to vote for? A. Well, just to be frank with you, I couldn't read it good. I couldn't say that.

Q. All right. And you re-registered when we had the new registration system go into effect in Gaston County, did you not? A. For the County elections, yes, sir.

Q. And Horace Helms down in Belmont registered you? A. That's right.

Q. What mill were you employed at? [11] A. Stowe Thread Mill.

Q. That's located in Belmont? A. Right.

Q. When you would get your check, could you tell how much your check was for? A. Sure.

Q. Your payroll check? A. Sure.

Q. And you would take it to the bank and cash it? A. I would sign it, yes, sir.

Q. And you would sign your name on the back, endorse it? A. Yes, sir.

Q. You had no trouble doing that, did you? A. No, sir. I've borrowed money down there. I sign all my papers. Sure.

Q. Were you able to read those papers that you signed when you borrowed money or did you have somebody to read it to you? A. My wife did.

Q. She would read it to you? A. Yes, sir, and also Mr. Ford.

Q. You couldn't read it yourself? A. No.

Q. Now, he asked you to read this passage at the top of this paper, which has been marked defendant's exhibit [12] number two. Would you read that again for me? A. I couldn't read all of it.

Q. Read what you can. Read every word you can, starting at the front. A. Let's see if I can pronounce it. Every.

Q. Do you know what this word is? A. P-e-r—

Q. The second word.—A. This one right here?

Q. The second one, yes, sir. A. P-e-r-s-o-n.

Q. If you can read it, all right, and if you can't, it's all right. A. P-e-r-s-o-n.

Q. You can't read that one. All right. What about the third word? Can you read the third word? A. P-r-e-s—

Q. You can not read the third word, which is presenting? A. No, sir.

Q. What about the fourth word? Can you read that? A. H-i-m—no.

Q. All right. Shall. Be. A. Shall. Be.

Q. Read whatever other words you can read. A. And Any. Of. The. In. The.

[13] Q. And you can't read that. The only words that you can read then on defendant's exhibit number two was

the word 'every', the word 'for', the word 'to', the word 'and' the word 'any', the words 'of the', and the words 'in the', is that correct? A. That's right.

Q. Do you remember whether or not Mr. Helms came to the mill—do you remember whether or not when Mr. Helms came to the mill that he registered a lot of people there at the mill? A. They registered about everybody there that I know of.

Q. What shift were you working on at that time? A. I was on the first shift.

Q. And he came down dometime during the morning so that you could register? A. Yes, sir. Of course, I could have went by there and registered but I just thought I would register while he was there.

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[15]

DEPOSITION OF CARL P. BAKER

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[16] MR. SCHWELB: Let the record show he is white also, please.

BY MR. SCHWELB:

Q. Mr. Baker, would you state your full name for the record, please, sir. A. Carl Preston Baker.

Q. Where do you live, Mr. Baker? A. 109 West Ruby Avenue.

Q. Is that here in Gastonia? A. That's right.

[17] Q. What is your occupation? A. Well, I'm retired.

Q. What did you do before? A. I was warehouse manager for U.S. Rubber Company.

Q. If you could keep your voice up so that everybody can hear. What is your age, Mr. Baker? A. Sixty-one.

Q. Were you at any time the registrar of any precinct in Gastonia—in Gaston County? A. I was.

Q. Of what precinct were you registrar, please? A. Number 2-A.

Q. And where is that located? A. Victory School.

Q. And during what period were you the registrar for that precinct? A. Well, I took charge just before the new registration in 1962 and I gave it up sometime in '64. I'm not sure of the date.

Q. You were registrar, were you, during the entire period of the re-registration? A. That's right.

Q. For the record, Mr. Baker, who appointed you? A. Well—

Q. How did you get your job? [18] Mac Davis was the Election Board Chairman and he appointed me.

Q. And what were your duties as registrar? A. Well, to conduct elections and register voters.

Q. Were you paid for that job? A. That's right.

Q. What was your salary? A. $20.00 a day.

Q. Did you also receive any additional salary for registering people on non-registration days? A. That's right.

Q. How much was that? A. Twenty cents per name.

Q. Now, did you receive any instructions as to how to register them? A. I did.

Q. Generally speaking, what were you told to do? A. Well—

Q. And by whom? A. Well, of course, we had—

MR. STOTT: I want to object to this question.

A. Before the new registration started, there were meetings called to go over the procedure and, of course, we had to ascertain whether they could read or write and the proper age and have they ever been convicted [19] of a felony and have they been a citizen of the State of North Carolina for one year and the precinct for thirty days. I think that about covers it.

MR. SCHWELB: I would just like to say for the record that the Government takes the position that in view of Mr. Baker's position as registrar at the time when the events relevant to this case took place we have the right to examine him as an adverse witness. Off the record. * * *

Q. (By Mr. Schwelb) Now, have you discussed this case with agents of the Federal Bureau of Investigation? A. I have.

Q. Did they come to your house? A. They come to the store. I was filling in for my wife at the store.

Q. Did you give them a truthful and complete as you could explanation of your duties? A. As near as I knew.

Q. Were they polite to you? A. Very nice.

Q. Did they try to make you say anything that you didn't want to say? A. No.

Q. Now, you mentioned that you received some instructions. [20] Did you get the impression that you had some degree of latitude in determining whether people were entitled to register or not? A. I did.

Q. Was it your understanding that that had the approval of the Board of Elections? A. Beg your pardon?

Q. Did you understand you received this latitude from the Board of Elections? A. I don't quite get the question.

Q. Well, I'll withdraw the question. A. That's all right. State it again.

Q. I'll get to it in another way, I think. Do you recall approximately how many people you registered while you were registrar? A. I know exactly.

Q. Can you tell us exactly? A. I'll give you both figures. On the four dates that we had the polling place open, that was on April the 21st, the 28th, May the 5th, and May the 12th—

Q. Of what year was that? A. 1962. —we registered a total of 1,420 persons. Now, that doesn't mean that they were all registered on those dates because I went back to the schoolhouse on several occasions in the afternoons and was there for [21] anyone that wanted to come in. Of course, that was the total during the four weeks that the books were open at the polling places.

Q. Did you also register people at your home? A. I was allowed to. I don't recall but two that I ever registered at home.

Q. How long have you lived in Gaston County, Mr. Baker? A. All my life. I was born here.

Q. In general, Mr. Baker, when you were a youngster, were the educational opportunities for all people as good as they are now? A. No.

Q. Some people found it very difficult to get an education at that time? A. That's right.

MR. STOTT: Object to that.

* * * * *

Q. (By Mr. Schwelb) Do you know whether or not there are people in Gaston County as a result of what you have just described who can read and write only a little bit? A. Do I know—

Q. Do you know whether there are some in the county? A. I would say so. I'm not acquainted with anyone as I know of.

[22] Q. Well, did you take into consideration in determining whether to register people the fact that some people couldn't get a very advanced education? A. I did.

Q. Now, you mentioned earlier that you were told by the Board of Elections that these people were supposed to be able to read and write. What tests did you give them for reading and writing? A. Well, we had the printed oath that we were supposed to hand them and ask them to read.

Q. And did you have them read that? A. In most of the cases, yes. There were some instances when I didn't.

Q. Tell us something about the instances when you didn't. A. Well, let's say a person—I remember several instances where an older person came up and said their eyes were bad or they couldn't read that fine print or something like that and I would read it—I would read the oath to them and get them—

Q. If somebody told you they could read, would you take their word for it? A. I think so, yes.

Q. And if somebody told you that they could read, did you give them any additional tests? A. No.

[23] Q. Do you have any way of knowing as to whether some of those people could, in fact, read? A. You mean the ones that I was a little doubtful of that I asked?

Q. Did you register anybody that you didn't have any definite knowledge as to whether they could read or not? A. I'm not sure that any that were registered could not read and write.

Q. Are you positive that all of them could read and write? A. No, I wouldn't be positive.

Q. You didn't give each one of them a test which they had to pass? A. No.

Q. Now— A. In some cases I thought it was an insult to their intelligence if I asked them to read that.

Q. Now, I believe you discussed with the F.B.I. your views about some people who had little education contributing to the county anyway. Do you remember talking to the F.B.I. about that? A. Sure. I feel that way yet.

Q. Did you tell the F.B.I. you thought they should be entitled to vote, too? A. I sure did.

[24] Q. During the whole time did you reject anybody for illiteracy? A. No.

Q. Did you reject any for living in a different precinct? A. That's right. I had to send some to another precinct. That's the only thing that I can recall.

Q. If somebody came in and said he had forgotten his glasses and that's why he couldn't read, would you accept them or reject them? A. I don't know. I didn't have that to happen.

Q. You didn't have that to happen? A. No.

Q. Now, during the time when this registration was taking place—strike that question. Now, to the best of your knowledge, no public announcement was ever made at that time that people would be registered even if they couldn't prove that they could read and write, was there? A. You mean there were announcements made to that effect?

Q. I'm asking you. Were there? A. Not to my knowledge.

Q. You didn't make any such announcement? A. No.

Q. Now, you got instructions, did you, Mr. Baker, that you could register people in your home? [25] A. In theirs or mine either one.

Q. Do you have any personal knowledge as to whether some registrars did register people in their homes? A. Well, I imagine they did because I did on several occasions.

Q. In general, Mr. Baker, is it usual for negroes and white people to visit each other in their homes for dinner and that kind of thing in Gastonia? A. No.

Q. I'm asking you only in general. There may be exceptions. And, generally speaking again—and I know there are exceptions—but would you say that negroes in Gaston County are poorer or richer than white people?

MR. STOTT: Object to that.

A. Do you want—

MR. STOTT: Answer the question.

A. I would say poorer as a general rule.

Q. (By Mr. Schwelb) Do quite a few negroes work for white people? A. Oh, yes.

Q. Do many white people work for negroes that you know of? A. You might find some supervisor in some of the plants.

Q. Generally speaking, is that usual? A. No.

[26] Q. For the record, did you discriminate in any way between white people and negroes? A. No. May I just make a statement?

Q. Sure. A. I was born and raised in Gaston County. I've voted ever since I reached a voting age, which was in '28, and never, to my knowledge, have I ever heard of a nigger being denied the right to register and vote, not in this community. In fact, I have known cases where poll books in years past have been taken around to their homes to register them. Grady might bear me out on that.

Q. When you first registered in the county, did you have to take any kind of a literacy test? A. Not to my knowledge. That's been too far back.

Q. Have you got a high school education? A. Yes, sir.

Q. You wouldn't have had any trouble with a literacy test? A. No.

* * * * *

BY MR. STOTT:

Q. You say that you have never denied anybody the right to vote because of some test that was given you by the County Elections Chairman? A. No.

[27] Q. And you just served as registrar during that year of 1962, is that right? A. No. On through into '64.

Q. Through '64? A. And I had these eye operations and I had to give it up.

Q. I remember. And do you know how many colored people were registered in the Victory School box? A. Yes.

Q. How many? A. Well, we never did get any further than April 21st through May the 12th on those totals, but, remember, this was the new system where the books was open continuously. Then in three weeks in October of that year we opened the books back at the polling places on Saturday for the general election. After that was over I had actually 1,646 persons registered.

Q. In the Victory School box? A. By the first election after the new registration.

Q. And how many of those were negroes? A. 119.

Q. Did you ever deny any negro the right to vote because of some test? A. Never.

Q. Or the right to register, I should say. A. Beg your pardon?

[28] Q. Did you ever deny anyone of that race the right to register? A. White or colored, no, sir.

Q. All right. You said in some instances you would read the test to some person if they had poor vision, is that correct? A. Not only in—that's right. Grady, you know how things were when the registration was on. At the start everybody rushed in. Well, it was impossible for one man to take them one at a time and let them read that over, so I would get about six or eight at a table and ask them to put their hands on the Bible and I would read the oath to them and ask each one if they would swear by that oath. That way you could handle them quicker, and get them through the line. I have done it that way.

Q. Was this the oath they were required to read? A. The registration oath.

Q. The registration oath? A. That's right.

Q. These people that you registered, were you satisfied in your own mind that they were qualified to register? A. I was.

Q. If, after having given them the test you were not satisfied in your judgment that they were not qualified [29] to register, would you deny them that right? A. If after I had registered them?

Q. No. If, after you had given them the test and— A. Sure. If I wasn't satisfied in my mind I would have probably, yes.

Q. You used your own judgment in that regard? A. I think the law allows the registrar to use his judgment.

Q. Did you do that? A. I did.

Q. Those that you didn't give the test, what was the reason for not giving the test in some instances? A. Just like I explained. Grady, you can pretty well tell. A fellow walks up to the table or a lady, you can pretty well tell. Now, a lot of the cases—like I say, the old folks—I remember one instance. The old gentleman said that his glasses had left his eyes—he couldn't read that fine a print, and I didn't doubt him a bit because I think the old man could have read it. So I read the oath to him and he swore to it.

Q. And he signed his name? A. Yes. See, the way we worked that—I would give the test and then I would ask him his party affiliation and I would give him the proper colored slip and he would take it back to the tables where the deputy [30] registrars were.

Q. The determination of whether or not somebody was qualified was left entirely to you, wasn't it? A. It was.

* * * * *

BY MR. SCHWELB:

Q. Mr. Baker, the only thing anybody was ever required to read was that oath, is that right? A. That's right.

Q. Now, isn't it true that you indicated to the F.B.I. that some people who gave excuses like bad vision or something actually may not have been able to read or write but you registered them anyway? A. Well, there's a possibility, but I was satisfied that they were telling the truth.

Q. You never disbelieved anybody or rejected them under those grounds? A. That's right.

Q. Now, just for clarification, Mr. Baker, didn't you tell the F.B.I. that there were some people who told you—who

indicated they didn't have their glasses with them—you didn't require those people to read, did you? A. That's right. I would read the oath to them.

* * * * *

[31] BY MR. STOTT:

Q. Do you have any statistics on the number of people who voted in the November, 1962, general election? A. I do.

Q. At that time I believe you said there were 1,646 people registered in that precinct? A. That's right.

Q. How many of that 1,646 registered actually voted in that election? A. 1,234.

Q. Have you figured out that percentage, as to what that is? A. That's about 75.7, as near as I can figure.

Q. All right. A. And also I can give you the niggers that voted if you want them. I mean if you're interested.

Q. How many colored people did vote in that election? A. I had 1,156 of 1,527 registered whites voted.

Q. The others were colored people? A. I had 78 of 119 negroes to vote.

* * * * *

[33]

DEPOSITION OF HILTON HIGH

[34] MR. SCHWELB: I would like the record to show that this witness was registered on May the 9th, 1962, in Precinct 41 by Registrar Thelma Johnson, and his race is white.

BY MR. SCHWELB:

Q. Mr. High, would you state your full name for us, please? A. Hilton High.

Q. Where do you live, Mr. High? A. High Shoals.

Q. Is that in Gaston County? A. Yeah.

[35] Q. What is your street address, do you know? A. Lincoln Street, Route 5.

Q. And how long have you lived in Gaston County, do you know? A. Thirty-one years.

Q. And how old are you? A. Forty-seven.

Q. Now, how much schooling have you had? A. I didn't go to school but to the second grade.

Q. And were you sick when you were a little boy? A. Yeah.

Q. Where did you go to school? A. Wellford, South Carolina.

Q. You say you were sick when you were a little boy? A. Yeah. I've been crippled all my life.

Q. Are you registered to vote? A. Somebody else voted for me.

Q. What I mean is—have you gone to vote? A. No.

Q. Have you gone to register to vote? A. Yeah, I vote.

Q. Do you remember Mrs. Thelma Johnson, who used to be Thelma Hope? Do you remember Thelma Hope? A. No.

Q. Well, when you first registered, Mr. High, who got [36] you to register? A. That Hope girl.

Q. The Hope girl? A. Yeah, living in High Shoals.

Q. Is she the lady whose name is now Mrs. Thelma Johnson? A. That's right.

Q. Is she married now? A. Yeah, she's married now.

Q. Do you know if she's the registrar out where you live? A. Yeah, she keeps the books. She's supposed to. I reckon she still keeps them.

Q. Now, can you write your name, Mr. High? A. Yeah. That's all.

Q. Can you read anything else? A. No.

Q. Now, did you want to register? A. I didn't want to.

Q. Why did you register even though you didn't want to? A. That's right.

Q. Why did you when you didn't want to? A. I didn't know nothing about it and I didn't want to.

Q. Well, even though you didn't want to, you registered anyway? A. That's right.

Q. Who got you to do that? [37] A. Thelma Hope.

Q. Now, did you tell her whether or not you could read and write? A. Yeah. I told her.

Q. What did she say? A. Said 'I'm sorry'.

Q. Now, did you mention that you put your name on the book yourself or— A. Somebody else done it.

Q. All right. And you went to vote one time, did you, Mr. High? A. Yeah. I went to vote one time. The last time.

Q. Was that when the president was running? A. Yeah.

Q. Now, did you know how to read the ballot? A. No.

Q. How did you vote? Did somebody help you? A. Yeah. Some of them there showed me how.

Q. Did you tell them who you wanted to vote for? A. I told them Kennedy. That's what he done.

Q. That was the last time the president was being elected? A. Yeah.

Q. Now, just for the record; I would like to show you defendant's exhibit two to an earlier deposition and ask you—are there any words on this sheet of paper [38] that you know how to read? Can you read any of these words? If you can't just go ahead and tell us. A. No, sir.

Q. Did you ever pretend that you could read? A. Yeah.

Q. When you registered, did you tell them that you could read? A. No. I told them I couldn't read nothing.

* * * * *

BY MR. STOTT:

Q. You told this to Thelma Hope, that you couldn't read? A. That's right.

Q. Did you write your name and sign your name at that time so you could vote later? A. Somebody did. I didn't.

Q. You didn't sign your name yourself? A. No, sir.

Q. You don't know who signed your name? A. No, sir.

Q. But you can write your name? A. Oh, yeah. I can write my name but I didn't sign my name on them books. Somebody else done it.

Q. Mr. High, will you pull that chair up to the table? I want you to write your name on there if you don't mind, please. Just wrote your name anywhere on that [39] piece of paper. Write it the way you sign your name. A. Okay.

Q. All right, sir. Thank you, sir.

MR. STOTT: I would like to mark this for identification as plaintiff's exhibit number one.

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Q. (By Mr. Stott) Do you work anywhere, Mr. High? A. No, sir.

Q. Are you disabled and cannot work? A. That's right.

Q. Have you ever been able to work? A. I worked three weeks one time down at High Shoals Mill. I couldn't make it.

Q. Were you born in Gaston County? A. Spartanburg County.

Q. Spartanburg County, South Carolina? A. That's right, in 1920.

Q. But you have been living in— A. In High Shoals thirty-one years.

Q. Thirty-one years? A. That's right.

Q. Did you vote for any other president other than President Kennedy? A. No, sir.

Q. That is the only one you have ever voted for, is that [40] right? A. That's right.

Q. And have you voted in some of the county elections, like for the Sheriff and the County Commissioners? A. No, sir.

Q. Have you ever voted for any of the governors of North Carolina? A. No, sir.

Q. When you would go in to vote, you say somebody would have to go in the voting booth with you, is that correct? A. That's right.

Q. And they would have to read the names to you and—

Q. That's right.

Q. Then you would have them to mark your ballot for whomever you told them you wanted to vote for? A. Yes, sir.

Q. If you get a check of any kind, can you read the amount on the check to know how much it is? A. I'm drawing a government check, a little check for $43.60.

Q. A month? A. Yes, sir.

Q. And can you read that when you get it, the amount on the check, or does somebody have to read that to you? A. Somebody has to read it to me and sign my name to the [41] back of it to have it cashed.

Q. Does somebody sign your name on the back of that check that you get from the government or do you sign it? A. I'm supposed to sign it but my daddy signs it for me, on the back of it.

Q. But you're with him when he does sign it, is that right? A. Yeah. I get it and he signs it at the house and I go to the store and have it cashed.

Q. And then he gives you the money for the check, is that correct? A. Yes, sir.

Q. Do you live with your daddy now? A. Yes, sir.

Q. Does anybody live there other than you and your daddy? A. Him and his wife. He's been married twice.

Q. I see. But you went to the second grade in school in Spartanburg County, South Carolina? A. That's right.

Q. Why did you quit school? A. I was crippled up and couldn't go. I was three year old before I made a step.

Q. I see. But you do want to vote in these elections, do you? A. They want me to but I don't care much about it.

[42] Q. How did you know that you wanted to vote for President Kennedy? A. Up at High Shoals—

Q. Take your hand down so he can year you, Mr. High. How did you decide you wanted to vote for President Kennedy? A. They just gave me some little old papers. Marked in them little old round things. Put a mark in it.

Q. A sample ballot? A. I reckon that's what you call it.

Q. Did you see President Kennedy on television? A. Yeah, I seen him a time or two.

Q. Did you hear him talk on television? A. Yeah.

Q. Is that what caused you to vote for him or was it because somebody asked you to? A. A lot of them wanted me to and I said it was just as well I would vote for him as anybody else.

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BY MR. SCHWELB:

Q. Just one thing, Mr. High. When you voted for the president, was that after you registered? A. Yeah.

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MR. SCHWELB: It's stipulated between the parties [43] that a photostatic copy of this witness's registration form will be attached to this deposition at a later date. We don't have a photostatic copy now.

MR. STOTT: As defendant's exhibit number three?

MR. SCHWELB: As defendant's exhibit number three.

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[45]

DEPOSITION OF FRED WASHINGTON STAMEY

MR. SCHWELB: May the record show that this witness was registered on April 28th, 1962, in Precinct 20, and that the registrar was Horace Helms, and that this witness is a white man.

BY MR. SCHWELB:

Q. Mr. Stamey— A. Let me get over here where I can understand you.

Q. I'll sit closer to you. A. I don't want to misunderstand you and say something that I don't know what it's about.

Q. Are you a little hard of hearing, Mr. Stamey? [47] A. I have to pay close attention. I'm nervous, too.

Q. Would you try and relax as best you can? Will you, Mr. Stamey? A. I'll try to get along with it.

Q. Will you tell us your full name, please, Mr. Stamey? A. Fred Washington Stamey.

Q. And where do you live, Mr. Stamey? A. 308 Julia Avenue.

Q. Is that in Belmont? A. Belmont.

Q. And is that in Gaston County? A. Yes, sir.

Q. What do you do for a living, Mr. Stamey? A. Work in a mill.

Q. What mill do you work in? A. Work at Stowe Thread.

Q. And what is your job there? A. Run cards.

Q. How old are you? A. I'm 61 now. I'll be 62 in August, the 25th.

Q. What year were you born, do you remember? A. 1905.

Q. Now, did you have a chance to go school very long, Mr. Stamey? A. Well, I didn't. I wasn't interested in learning much.

[48] Q. How many years did you have a chance to go to school? A. Well, couldn't have been over four. I went to work when I was ten or eleven year old.

Q. What grade did you finish? A. I finished the first and stayed in it maybe a couple year. I maybe stayed in another one a couple year and didn't finish it.

Q. Now, did you have a chance to learn how to read and write? A. What little bit I learnt, I forgot about it. I just didn't try much of it until recent years when this lady come to the house and taught me how to read and write my name.

Q. Can you write your full name? A. She didn't put that full name. She just put Fred Stamey.

Q. Do you know how to write Fred Washington Stamey? A. No, sir. I can write Fred Stamey but that Washington– I wouldn't know which way to start that.

Q. Can you read anything else besides your name? A. Well, sometimes I pick up a paper and maybe some of that I can make out. And what I can't make out I just skip and go on down to something I can make out. I'm confused. I don't know what it's all about.

Q. I'm going to show you defendant's exhibit two and I would like you to read every word here that you know [49] how to read, please. Take your time and any word that you know how to read, you read it, please, out loud. A. Every. Person. I can't pronounce that other one. Himself. For. I call that 'registration'.

Q. Very good. A. Shall. Be. Able. To. Read. And. Write. Any. I don't know what the other is. Of. The. I don't know what that is. In. The. I don't know that and I don't know that.

Q. You know some of them but not all of them, is that right? A. That is the way I read the paper.

Q. Now, how long have you been voting in Gaston County, sir? A. I don't remember how far back it was

when I started. I don't remember. I was working at the Chronicle Mill and they had a fellow, a superintendent, and we would vote like he wanted us to vote. A lot of times I would go in there to vote and I wouldn't know who I was voting for and they would call him in and he would mark my ticket.

Q. When you first registered—do you remember the first time you registered many years ago? A. No, sir, I don't.

Q. Were you ever given a test to see how much you could [50] read when you first registered? A. No.

Q. Do you remember back around 1962 when everybody had to register all over again? A. I remember when everybody had to re-register, making new books or something, yes.

Q. When you went to re-register, where did you go to re-register? A. To City Hall.

Q. And what kind of a test did you have to take there? A. None that I know of. I don't remember taking any test. Me and my wife come off from work and I told her we'd go by and register. So we went in and this fellow was there. He got the paper—or card down there, and I don't know whether she registered before I did or not, but she went ahead and signed her name and I had to sign my name and I said I couldn't do it. He said, 'Well, that'll be it'. I said I could write 'Fred Stamey' but he wanted that other in the middle and I couldn't do it.

Q. I would like to show you a registration form bearing your name and ask you if that gives your name here, Fred Washington Stamey? A. That's my name.

Q. Can you write that? [51] A. No, sir. My writing don't look like that.

Q. Do you know how to write 'Washington'? A. No, sir. I never wrote it in my life.

MR. SCHWELB: I would like to introduce this into evidence as defendant's exhibit four, please. It's already been marked.

A. Here's the kind of writing I do. I might do something such as that. This don't look like none of that, do it?

MR. SCHWELB: May the record show that the witness showed his State of North Carolina driver's license, which he signed 'Fred W. Stamey'.

Q. (By Mr. Schwelb) Now, Mr. Stamey, when you and your wife came in, were you required to read any part of the Constitution? A. I don't remember if we were.

Q. Well, you didn't write 'Fred Washington Stamey', is that right? A. No, sir.

Q. And have you been voting since that time? A. Yeah.

Q. Where have you been voting? A. Belmont.

Q. When you go to vote, does anybody help you with your voting? [52] A. No. I just go in there and tell them Fred W. Stamey. Over the years gone by I learnt about them dots and this name. Some of them names I can make out and some of them—but a lot of times when I come down there, if I don't know the name I mark in the circle, the little circles at the top.

Q. You mark in the circle if you don't know which names they are? A. That's right, just so I can say I voted.

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Q. (By Mr. Schwelb) Wouldn't you like to be able to continue to vote? A. Well, if I pay taxes I ought to vote. If I'm going to be allowed to vote on like I've been doing, am I going to have to do something else?

* * * * *

Q. (By Mr. Schwelb) Let me ask you this. Do you own your own home, Mr. Stamey? A. Yes, sir.

Q. Do you pay taxes? A. Yes, sir.

Q. How much taxes do you pay each year, do you know? A. I don't have a receipt with me.

Q. About? [53] A. I believe I paid seventy some dollars this past time, as far as I can remember.

Q. And you've been a good citizen in this county as long as you've lived here? A. I believe I've got a good record.

Q. You've never been in any trouble? A. I ain't supposed to have no police record.

* * * * *

BY MR. STOTT:

Q. Mr. Stamey, you have voted in Gaston County for a long time, have you? A. I've been in Gaston County I guess fifty years or close to it.

Q. You've never been denied the right to vote if you wanted to vote, have you? A. No.

Q. When you would go to the polls to vote on election-day, would you know when you went there who you wanted to vote for? A. I think so.

Q. And when you would go in the booth to vote, would you be able to tell who you wanted to vote for by looking at the ballot? A. Yes, sir.

Q. And if you wanted to vote a straight ticket, whether [54] it be Republican or Democrat, you would mark in the circle, is that right? A. Up at the top.

Q. Yes, sir. A. That counted all of them, as far as I know.

Q. I see. In other words, if you were going to vote a straight Democrat or Republican ticket, you would mark in the circle at the top? A. That's right.

Q. And you knew that's what you were supposed to do? A. That's right.

Q. And when you went to the City Hall in Belmont to re-register, after the new registration system was put in in Gaston County, Mr. [redacted]e Helms registered you, didn't he? A. I don't know whether he registered me or not. He refused. He said something another about how I couldn't write Fred Washington Stamey. Now, whether he told me I couldn't vote, I don't remember that.

Q. You voted in the last election, didn't you? A. Yes, sir.

Q. The one that President Johnson and Goldwater ran in? Did you vote in that election? A. I believe I did.

Q. Did you write the name 'Fred W. Stamey' for him when [55] you went to register that time? A. He wouldn't take it that way.

Q. I mean—did he have you to write it out for him? A. I don't remember whether he did or not. I'm going to be fair with you. I don't remember.

Q. But you can write Fred W. Stamey? A. Yes, sir.

Q. And that is the way you sign your name? A. That's the way I sign my checks.

Q. And you are able to read your payroll check when you get it, aren't you? A. Yes, sir.

Q. You know how much it's for, don't you? A. Yes.

Q. And you endorse your check when you get it cashed? A. My wife endorses it most of the time. Sometimes I'll just write 'Fred W. Stamey' on the back of it and get the money for it.

Q. I see. Just sign your name on this piece of paper right under this place here that's indicated plaintiff's exhibit number two. Just take your time and write your name the way you sign your name. A. Just anywhere?

Q. Anywhere on that piece of paper is all right with me. A. Just anyway?

Q. Yes, sir. [56] A. I'm making it awful big.

Q. That's okay. That's just fine. It doesn't make any difference how big or small you write it. All right. Fine. Thank you, Mr. Stamey.

MR. STOTT: Let the record show that I'm offering for identification plaintiff's exhibit number two, the signature of Fred W. Stamey, signed in the presence of the Commissioner.

MR. SCHWELB: Are you offering it in evidence?

MR. STOTT: Well, I don't know that I can offer it in evidence. Yes, I want to offer both plaintiff's exhibit number one in the first deposition and plaintiff's exhibit number two into evidence.

MR. SCHWELB: We have no objection.

A. That don't look like what's on that.

Q. (By Mr. Stott) Well, that's all right. You say you finished the first grade? A. I finished the first grade I reckon, and as well as I remember I got into the second and it looked like I wasn't learning nothing there, and my daddy figured I would be worth more to him at work.

Q. Where were you living at that time? A. Shelby.

Q. In Cleveland County, North Carolina? A. Yes, sir.

[57] Q. But you did learn to read some years later? A. From—in Belmont from Mrs. Effie Hall. She was a Hall.

Q. Did she teach you to read and to write or just to read some? A. She teached me to read my name and write it.

Q. I see. You say that sometimes you will pick up the Gastonia Gazette and— A. Any paper. Some of it I can pronounce and some of it I just skip it and go on. I figure it don't amount to nothing no way.

Q. Can you read some of the articles in the paper and understand and know what it's about? A. Yeah, some of them.

Q. Do you read the funny papers? A. Dick Tracy.

Q. Do you read Dick Tracy? A. Yeah. Some of that and some of it I don't understand.

Q. I see. But when you read Dick Tracy, you can understand it enough to know what it's about? A. I think so.

Q. Yes, sir. Do you read the sports page of the newspaper? A. No, sir.

Q. How long ago was it that you were taught to write your name? [58] A. Oh, it's been—oh, Lord, I don't know.

Q. Just as near as you can remember. A. I've been living where I'm at ten or eleven years and I guess it might have been five or six years back at that time.

Q. Do you have any children? A. One.

Q. Did your child go to school? A. She was born in '34.

Q. Did she ever go to school? A. Yeah, she finished high school. She lets me know about it, too, about me not trying to learn to read and write.

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[60]

DEPOSITION OF EURAL ROLLINS

[61] MR. SCHWELB: I would like the record to show, please, that this witness was registered on October the 10th, 1964, in Precinct 20 by Registrar Helderman. Let the record show, please, that this witness is white.

BY MR. SCHWELB:

Q. Would you state your full name for the record, please, Mr. Rollins? Do you understand my question? State your full name, please. A. My full name?

Q. Yes, sir. [62] A. Eural Rollins.

Q. And where do you live, Mr. Rollins? A. Belmont.

Q. Is that in Gaston County? A. Yeah. That's Gaston County.

Q. How long have you lived here in this county, please, sir? A. I'd say about twenty years.

Q. What is your occupation? A. Cotton mill.

Q. What do you do at the cotton mill? A. Run cards.

Q. Sir? A. Run cards.

Q. And how long have you been working over there? A. At that one place?

Q. Well, how long have you been working in a cotton mill? A. Been working in a cotton mill ever since I've been in North Carolina.

Q. Where were you born, sir? A. Tennessee.

Q. And you have been in North Carolina how long? A. I would say about twenty years.

Q. Now, Mr. Rollins, did you have a chance to go very far in school? [63] A. No, sir.

Q. How much schooling have you had? A. Well, I ain't Just like I told the man who come to see me, I ain't had no schooling, not to amount to nothing, not learning nothing.

Q. Can you write your name? A. Just bearly can write my name. I kind of got practice on that. I got my boy to help me on that.

Q. Can you read the newspaper? A. Not to no good.

Q. Now, have—are you registered to vote here in Gaston County, sir? A. Yeah. I registered in Belmont.

Q. How long have you been voting here? A. Ain't never voted but one time.

Q. How long has it been since you first registered, about? A. I don't know that. I don't keep up with it.

Q. Well, do you remember the first time you registered? Did anybody make you read or write anything? A. Nothing only he told me I would have to read a paper. I told him I couldn't read nor write, and my wife was there at the same time and he told me she could help me read it.

Q. Was that about five years ago when that happened? Let me ask you a different question. Was that when everybody had to re-register? [64] A. Yeah.

Q. About 1964? A. I imagine so.

Q. Now, what was it that they told your wife and you about her helping you? A. I told them that I couldn't read and write and I would have to have some help on it if I registered.

Q. Now, Mr. Rollins, can you recognize your signature? A. Yeah.

Q. I would like to show you a photostatic copy of something that appears to be your registration form and ask you if that is the way you write your name? A. Yeah.

Q. Is that your signature? A. That's it.

MR. SCHWELB: I would like to introduce that into evidence as defendant's exhibit five.

A. You can look at that and see I can't write good.

Q. (By Mr. Schwelb) Now, you say you voted on one occasion? A. One time is all I voted.

Q. Where was that? A. That was in Belmont.

Q. Did you vote by yourself or did you get some help? A. My wife was with me. She helped me.

[65] Q. Did they let your wife go into the booth with A. Yeah. The same booth with me.

Q. When you were getting registered, as you have described to us, were there any other people getting help that you remember? A. I didn't pay no attention.

Q. Do you own your own home, sir? A. No, sir.

Q. You live on somebody else's land? A. Mill property.

Q. Do you pay taxes each year? A. I pay taxes.

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BY MR. STOTT:

Q. Did you ever try to register prior to the time that we had the new registration system in Gaston County? A. I don't remember.

Q. What election was it that you voted in, Mr. Rollins? A. The president.

Q. The last presidential election? A. Yeah.

Q. Was that when Johnson and Goldwater were running or when Kennedy was running against Nixon? A. I believe it was Johnson. I believe it was that one.

Q. Sir? [66] A. I believe it was Mr. Johnson.

Q. Okay. And you were not denied the right to vote, were you? A. Not after I registered.

Q. Have you ever been denied the right to register anywhere? A. I went to vote one time and they said I would have to register before I could vote. I didn't know nothing about it, you know.

Q. But any time that you have been to register, you permitted to register at that time, were you not? A. I never have been but one time.

Q. But that time you were allowed to register? A. I registered, with my wife's help.

Q. You say you cannot read and write? A. Not to do no good, no.

Q. What do you mean by not to do any good? A. I just don't know everything. I ain't got no education.

Q. I see. Do you read the paper some? A. I can get a few words plain out of it. Sitting and studying them over and getting the meaning is about all.

Q. Do you read the sports page of the newspaper? A. No, sir.

[67] Q. Let me show you this writing which is defendant's exhibit number two in the first deposition and ask you

if you can read any portion of this, those words here. If you can just read out loud the words that you can read right on this, starting with this word. A. Any. Person. Is that right?

Q. Go ahead. A. I can try to figure it out.

Q. Go right ahead. Read it the way it looks like to you. A. Every person shall be able to read and write—

Q. Any more? A. In. The. Eligible.

Q. Do you know what that word is? A. No.

Q. All right, sir. A. I don't think I do.

Q. All right, sir. Did you go to school any at all when you were a child? A. Well, I went a little but not much.

Q. What grade did you go to? A. They called it a second grade, a first grade, or something another.

Q. Did you finish the first or second grade? A. No, sir.

Q. And you have not attended any school since the first or [68] second grade? A. No.

Q. Is that right? A. That's right.

Q. Have you tried to have anybody teach you any reading or writing after you left school? A. No.

Q. You said awhile ago that some of your children helped you sometimes? A. Yeah. Well, I got one boy at home now. He's in the ninth grade. I reckon he'll pass this year. I hope he does.

Q. When you went to vote the last time, and the only time that you have voted, did you know who you wanted to vote for when you went to the polls? A. Yeah.

Q. You had decided that yourself, had you not? A. Yeah. Me and my wife talked it over together.

Q. And you understood what you were doing when you went to vote? A. As far as I know I did.

Q. Or thought you did anyhow? A. I thought I did. I might not have.

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BY MR. SCHWELB:

[69] Q. Just one question. When you did register, you told the lady you couldn't read and write, is that true? A. It was a man

Q. A man. I'm sorry. You told the registrar that you couldn't read or write? A. I told him I couldn't read and write good. He said I was supposed to know how to read and write. He give me a paper anyhow and my wife was with me. I told him she wanted to register, too, so she helped me out and wrote my name.

BY MR. STOTT:

Q. You can write your name, though, can you not? A. Huh?

Q. You can write your name? A. Yeah, I can just bearly write my name.

Q. You endorse your payroll check when you get it, don't you? A. Well, sometimes and sometimes my wife does or my boy.

Q. But if you had to, you could sign it yourself and get it cashed, couldn't you? A. Well, yeah. A lot of people knows me in Belmont I reckon.

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[72] DEPOSITION OF CHARLES LEE CLARK

MR. SCHWELB: Let the record show, please, that this witness was registered on October the 3rd, 1962, in Precinct 8, and the oath was administered by William Lamar Rankin, and that this witness is a white man.

BY MR. SCHWELB:

Q. Mr. Clark, I wonder if you would tell us your full name for the record, please? A. Charles Lee Clark.

Q. Where do you live, sir? A. 626 Modena Street.

Q. Is that in Gastonia here, in Gaston County? A. Yes, sir.

[73] Q. When I ask you a question, Mr. Clark, I would like you to speak up loud so that the man who is taking down the testimony can get it. Is that in Gaston County? A. Yeah.

Q. How long have you lived in Gaston County, sir? A. Oh, I'll say about sixty years.

Q. How old are you? A. Huh?

Q. How old are you? A. 71.

Q. Where did you live before you came to Gaston County? A. McAdenville.

Q. Is that in Gaston County also? A. Yes, sir.

Q. What is your occupation, Mr. Clark? A. I'm retired now.

Q. What did you do before? A. Run a service station.

Q. Was it your own service station? A. Yes, sir.

Q. You ran it by yourself?

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MR. SCHWELB: Let the record show that the witness nodded his agreement.

MR. STOTT: You'll have to answer yes or no instead [74] of nodding your head, Mr. Clark.

Q. (By Mr. Schwelb) Now, Mr. Clark, do you own your own home? A. Yeah.

Q. Are you married? A. Yeah.

Q. And you pay taxes every year, do you? A. Yes, sir.

Q. You've been a good citizen in Gaston County all your life? A. Yeah.

Q. Now, tell us a little bit about how much education you had an opportunity to get? A. Ain't had none.

Q. How old were you when you first had to go to work? A. Eight years old.

Q. Tell us why you had to go to work at that time. A. My daddy was down with rheumatism and there wasn't nobody else to work.

Q. When you were eight years old? A. Eight years old.

Q. And from that you worked yourself up to where you could run your own gas station? A. Yes, sir.

Q. Now, Mr. Clark, can you read and write at all? [75] A. No.

Q. Can you write your name? A. No, not to do no good. Just scribble it a little bit.

Q. You never had an opportunity to learn how to do that, did you? A. No.

Q. Now, Mr. Clark, have you been voting in Gaston County? A. Up until the last president election. I didn't get to vote.

Q. When you first registered in this county, how long ago was that? A. I don't remember. I'll declare I don't.

Q. When you were about 21, did you start voting then? A. No.

Q. Now, during that time—when you first registered, did anybody ever require you to read and write anything? A. No.

Q. Did you vote regularly? A. Yes.

Q. Did you have a radio at home? A. Yeah.

Q. Have a television? A. Yeah.

Q. Did you follow on the news about the candidates? A. Yeah. I usually listen to the news.

[76] Q. Now, do you remember, Mr. Clark, when there was a complete re-registration and everybody had to register again about four or five years ago? Do you remember when everybody had to register all over again? Do you recall that? A. No, I don't remember whether I recall that or not.

Q. Do you remember when you tried to register again and you had some difficulty? A. You've asked me a question that I just don't—

Q. Let me ask the question differently. Was there a time in the last five years or so when you had trouble getting re-registered? A. I never had no trouble until the last president election. That was the only trouble I had.

Q. Do you know Sheriff Beam? A. Yeah.

Q. Now, do you remember ever talking to Sheriff Beam and telling him that you couldn't get registered? A. Yeah. I went up to his office and told him.

Q. Before you talked to Sheriff Beam, what happened that made it necessary for you to go and see Sheriff Beam? A. Well, I went to the schoolhouse to vote up there and she said I hadn't registered, and she asked me to read the card there and I told her I couldn't read. She said, 'You can't vote then'. So I went up to see Sheriff [77] Beam about it and he told me to let it go until two weeks after the election and to come up there and he would see I got registered. Se we went down there and I got registered.

Q. So you were registered a few weeks after that? A. Yes, sir.

Q. Were you able to read and write at that time? A. No.

Q. Did anybody make you read and write the second time? A. No.

Q. How long have you known Sheriff Beam? A. Oh, I don't know. I expect about 25 years.

Q. He is a friend of yours, isn't he? A. Yeah.

Q. He's helped you out? A. Yes, sir.

Q. Now do you have a driver's license? A. Yeah.

Q. Did anybody help you get your driver's license? A. I had a little trouble last time. Mr. Beam went up there and recommended me and they give me my license.

Q. Now, when you go vote, Mr. Clark, does somebody help you vote? A. No. I'll tell you—I always get the clipping out of the paper and get my wife to read it off to me and I [78] see where I want to mark. And then when I get my ballot, I lay that down besides of it and mark it off then.

Q. Does your wife go into the booth with you? A. Yeah.

Q. You have been a good citizen all your life in Gaston County, haven't you? A. I reckon. I ain't been arrested for nothing.

Q. And you want to vote, don't you? A. Yes, sir.

Q. Do you think you are the only person around here who never had a chance to get much schooling or are there— A. There's plenty of people ain't had no schooling back in them days.

Q. White and colored people? A. Yes, sir.

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BY MR. STOTT:

Q. Did you ever go to school at all, Mr. Clark? A. I went about two weeks. I think I got to go about two weeks.

Q. That was when you were just a small boy? A. Yeah, and my daddy got down and I had to quit and go to work.

Q. You said you had some trouble in one election. Which election was that? [79] A. The last president election.

Q. When President Johnson and Goldwater were running? A. That's right.

Q. Did you go up to vote and they wouldn't let you vote because you had not registered? A. Yeah. They said I hadn't registered.

Q. Was that on election day that you went and they told you that? A. Yeah. I went on election day.

Q. I see. So you hadn't tried to register before, had you—re-register? A. No.

Q. So then after the election about two weeks later, is when you went and talked to Sheriff Beam? A. That's right.

Q. And you talked to him about the fact that you had been denied the right to vote that day? A. That's right.

Q. You say you told the lady there at the voting place that you couldn't read or write? A. Yeah.

Q. But you can write your name? A. I can scribble it. You don't know hardly what it is.

Q. I see. When you ran the service station, did you have somebody working for you? [80] A. No, sir.

Q. How did you read your records and so forth? A. I didn't read no records.

Q. If somebody gave you a check, were you able to tell what it was? A. Yeah. I knew figures but that's all.

Q. You know figures but you don't know words? A. That's right.

Q. Then two weeks after the presidential election, when Johnson and Goldwater were running, is that when you went to Sheriff Beam about it? A. I went to Mr. Beam's office.

Q. And then he took you to the precinct? A. That's right, to register.

Q. To the registrar? A. That's right.

Q. And did they give you any kind of test then? A. No.

Q. He asked her to let you register and she registered you? A. (Witness nods.)

Q. Was it a woman or a man that registered you, do you remember? A. I believe it was a lady. I ain't going to say for sure.

Q. Anway, when Sheriff Beam went with you, she went ahead [81] and registered you, is that correct? A. That's right.

Q. Have you voted in an election since then? A. No. Ain't had nairn since then.

Q. But you do know when you go to the polls who you want to vote for, is that right? A. Yeah. I can tell by the paper.

Q. The what? A. I get the ballot out of the newspaper.

Q. When you see the ballot in the newspaper, can you read those? A. No. I mark down the one I want to vote for. Then when I go to vote I lay that down besides of my ticket and mark it off.

Q. You mark it the same way. What you would do is take the sample ballot they print in the newspaper and you would have your wife to read that to you or somebody else? A. That's right.

Q. How would you decide who you wanted to vote for, by the radio and television? A. No, not exactly. Just who you think you want to see in there.

Q. How would you decide who you would want to see in there, by what somebody else tells you or hearing people talk or television of what? [82] A. No. In other words, just who I want to see in there, who I think would be the best for the job.

Q. How would you decide who would be the best? A. Well—

Q. By hearing people talk about it or television or what? A. No, I never do hear people talk about it at all.

Q. How would you decide who you would think was best? A. It just comes to you, I reckon. You just think who you would want to see in there.

Q. Just the one that sort of looks best to you and sounds the best? A. That's right.

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BY MR. SCHWELB:

Q. Just a minute, Mr. Clark. First of all, at the time when you couldn't get registered, do you know if some-

thing got into the Charlotte newspaper about it? A. They come down there. Some lady turned it into the Charlotte News and they come down there and asked me about it.

Q. And you're positive in your mind just when—just what year all these things occurred? A. No. I can't keep up with all that stuff.

Q. You say you voted in the last presidential election? A. No, I didn't vote. I couldn't vote. They wouldn't let me vote.

[83] Q. When was the last time that you remember voting? A. The election before that I voted. I voted in all the elections except the last one.

Q. After the last time that they didn't let you vote, was it after that that you got registered again? A. Yes, sir.

Q. All right. Somebody told you about your picture being in the paper—in the Charlotte paper, did they? A. Yes, sir.

Q. Did you see it? A. No, I didn't see it. A lady told me.

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MR. SCHWELB: Let me introduce into evidence defendant's exhibit number six, please, the registration form for Mr. Charles Clark.

Q. (By Mr. Schwelb) Now, do you recognize this form at all Mr. Clark? Have you seen it at all before? A. I don't believe I have.

Q. Do you ever try to write your name? A. Oh, yes.

Q. Is this the way you try to write your name? A. Yeah. That's the way I kind of scribble it.

Q. Would that be a picture of you trying to write your name? [84] A. Yeah. I believe that would be about right. That's the way I signed my checks at the station. I never did have no trouble with them. The bank would take them.

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BY MR. STOTT:

Q. The last election you voted in then was the Kennedy-Nixon election, is that right? A. That's right.

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DEPOSITION OF
PAUL WILLIAM STIWALT

[87] MR. SCHWELB: Would the record show, please, that this witness was registered on May the 5th, 1962, by Registrar Crawford in precinct 17, and that he is a white man.

BY MR. SCHWELB:

Q. Mr. Stiwalt, would you state your name, please? A. Paul Stiwalt.

Q. Stiwalt, is that the way you pronounce it? Paul William Stiwalt? A. That's right.

[88] Q. How old are you, sir? A. Fifty.

Q. And where do you live? A. Bessemer City.

Q. Sir? A. Bessemer City.

Q. In Gaston County, is that correct? A. Yes, sir.

Q. Where were you born? A. I was born in Georgia.

Q. And how long have you lived here in Gaston County, sir? A. All my life but one year.

Q. What do you do for a living, sir? A. Run a grocery store.

Q. You run the store yourself? A. Yeah, mostly.

Q. You pay taxes? A. Yes, sir.

Q. You've been a good citizen and kept out of trouble? A. Yes, sir.

Q. Now, how much education have you had, Mr. Stiwalt? A. First grade.

Q. Did you have a chance to go to school beyond that? A. Well, I worked on a farm all the time.

Q. How old were you when you first started working? A. I was ten years old, to amount to anything.

[89] Q. Now, not having had much schooling, did you learn how to read and write? A. No, sir.

Q. Can you write your name? A. Yes, sir.

Q. Can you read or write anything beyond that? A. Not to amount to anything.

Q. Now, when you were about 21 or 22 years old, did you register to vote? A. Did I what?

Q. Did you register here to vote, in Gaston County? A. Yes, sir.

Q. And when you first registered, do you remember what—do you remember where that was, the first time? A. I registered in Bessemer City.

Q. Were you made to read or write anything in order to register the first time? A. Well, I could write my name.

Q. That was when you were 21 or 22 years old? A. (Witness nods.)

Q. Now, did you have to read any part of the Constitution? A. No, sir.

Q. Did you have to write any part of the Constitution? A. No, sir.

Q. Did you do all that the registrar asked you to do? [90] A. Yes, sir.

Q. Now, Mr. Stiwalt, back about four or five years ago, do you remember when everybody had to register all over again? A. Yes, sir.

Q. Did you re-register at that time? A. Yes, sir.

Q. And where did you go to do that? A. I went up there at the Bessemer City Hall.

Q. And what kind of a test, if any, did you get? Did you have to take any kind of a test? A. No, sir.

Q. Did they give you any section of the Constitution to read or anything like that? A. She showed me a paper, I told them I couldn't read, and I just signed my name.

Q. Did they let you register even though you told them you couldn't read? A. I reckon they did. I registered anyhow.

Q. Have you voted also? A. Yes, sir.

Q. You've voted since that time? A. Yes, sir.

Q. Nobody ever stopped you from voting, did they? A. No, sir.

Q. Now, when you go to vote, do you get some assistance [91] from anybody to vote? A. Well, I get them to read the names out to me and I mark them and I vote for who I think is best.

Q. Who reads the names out to you, somebody who works at the polls? A. Yeah, he did, a friend of mine.

Q. Can you recognize the names on the ballot? A. Can I recognize them?

Q. Yes. A. When somebody shows me I can, yes.

Q. He tells you who they are? A. Yes, sir.

Q. I see. Do you know if there are other people in Bessemer City who haven't had too much of an education? A. Yeah, a few.

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Q. (By Mr. Schwelb) I'm sorry. I would like to show you a photostatic copy of what appears to be a registration form, and I would like to ask you if at the bottom here that is your signature? A. Yes, sir.

Q. You recognize that as being in your handwriting? A. Yes, sir.

MR. SCHWELB: I would like to introduce this into [92] evidence as defendant's exhibit seven.

Q. (By Mr. Schwelb) You wrote your name there, is that right? A. Yes, sir.

Q. You didn't have to write anything else? A. No, sir.

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BY MR. STOTT:

Q. How long have you been running a grocery store, Mr. Stiwalt? A. About seven or eight years.

Q. Are you able to read the invoices and things of that type that you get in your store? A. I know them when they come in. See, I have my taxes filled out. Another lady fills them out for me.

Q. When you order some groceries or that type of thing from one of the wholesale houses, can you check that order to see whether you've got the right number of cases? A. Yeah. I check with them. Yes, sir.

Q. Sir? A. I check with them. They check them off and I go along with them.

Q. Can you read it enough to check it off? Can you read the paper to check it off to see if you've got, say, [93] a case of tomatoes if you happen to buy them? Can you read those things? A. Well, I just go along with them. When they read it, I check behind them, you see.

Q. But you never did got to school after the first grade? A. No, sir.

Q. And when you went to register in May of 1962, which was when the new registration came into effect, you didn't have to read any kind of test or anything? A. No, sir.

Q. Could you read at that time? A. Nothing only my name and stop signs and things like that.

Q. You have never been denied the right to vote in Gaston County, have you? A. Have I what?

Q. Have you ever been denied the right to vote? A. No, sir.

Q. You have always voted every time you wanted to vote? A. Yes, sir.

Q. And when you would go in to vote, you would know who you wanted to vote for? A. That's right.

Q. Would you make up your mind before you went to the polling places? [94] A. Yes, sir.

Q. But you say you couldn't read the names on the ballot of the people that you wanted to vote for? A. After they show me I can. I know where they're at then.

Q. You have to have somebody to point out to you where to mark the ballot? A. Yes, sir.

Q. When you told the registrar in 1962 that you could not read, did he say anything to you? A. He didn't say nothing out of the way. He didn't argue with me.

Q. And did you tell him that you had been registered before? A. Yes, sir.

Q. So he let you go ahead and re-register? A. That's right.

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DEPOSITION OF

[97] JAMES CECIL CLAWSON

BY MISS GALLAGHER:

Q. For the record, Mr. Clawson, would you state your name, please? A. James Cecil Clawson.

Q. And what is your address? A. 203 North Pink Street, Cherryville, North Carolina.

Q. How long have you been living in Cherryville, sir? A. Since '40.

Q. Since 1940. And are you employed? A. Yes, ma'am

Q. What is your occupation? [98] A. Truck driver.

Q. And for what company are you a truck driver? A. Carolina Freight Carriers.

Q. How long have you been working for Carolina Freight? A. Sixteen years.

Q. Are you an official with the—do you deal with elections in Cherryville? A. Well, I'm a judge.

Q. An election judge? A. Yes, ma'am.

Q. In what precinct is that? A. Number two.

Q. Cherryville Precinct Number two. How long have you been an election judge? A. Eight or ten years. I don't know just how long it's been.

Q. You've been an election judge continuously for the last five years, though? A. Yes.

Q. In your capacity as an election judge, is it your duty to be at the polls all day on election day? A. Yes, ma'am.

Q. And do you deliver the ballots to people who come to vote? A. Yes, ma'am.

[99] Q. Of the people who come to vote, do some of them require assistance in voting? A. Yes, ma'am.

Q. Are there people who require assistance both from you and from other persons? A. Yes, ma'am.

Q. Considering the people who require assistance from you, about how many of those are there in the average election? A. Well, I don't know that. This rest home deal is my biggest deal.

Q. There is a rest home in your precinct? A. Yes. Old folks and crippled people and blind people and such as that.

Q. And about how many people from that rest home do you say would require assistance? A. 25 or 30.

Q. 25 or 30. Is that Beam's Rest Home? A. Yes, ma'am.

Q. Now, besides the people at Beam's Rest Home, are there other people who require assistance? A. Once in a while there's a couple. Two or three maybe.

Q. And if they require assistance, do they just ask you? Do they say to you 'Would you come in and help me?' A. It's usual they will say something to the registrar [100] and

he'll tell me to go help them or he will go help them or have the other judge.

Q. Has it occurred that someone has needed assistance who didn't seem to be blind or physically disabled as best you could tell? A. Well, I don't know. Most all of them are old folks, failing in their eyesight or crippled in their hands or arms.

Q. But there might be some that aren't obviously disabled?

MR. STOTT: Objection.

Q. (By Miss Gallagher) That don't appear to you to be disabled?

MR. STOTT: Objection.

Q. (By Miss Gallagher) Go ahead and answer. A. Well, I don't know. There could be some that was able. I don't know.

Q. Now, you said that besides the people who get assistance from you or the other election officials there are some people who get assistance from other people, is that right? A. Some of the immediate family.

Q. Members of their immediate family. And do the members of their family go into the voting booth with them? A. Yes, ma'am.

[101] Q. About how many of those would there be in an average election? A. Oh, I don't know. Not over two or three.

Q. Two or three. But you don't have any rule prohibiting that, do you? A. No.

Q. It's perfectly all right for someone to get assistance going into the polling place? A. If it's some of their immediate family they can.

Q. If it's a member of their immediate family. How many Negro people are there registered in your precinct? A. Not over six, if there's that many. I just don't know. I never did pay that much attention to it. We never have had but one or two that ever votes regular.

Q. And do those Negro people to the best of your knowledge all vote by themselves? A. Yes.

Q. They don't require any assistance? A. No.

Q. Is it your understanding at this time that people have to be able to read and write in order to vote? A. I don't think so.

Q. You don't think so. How long has it been since it has been required that a person be able to read and write in order to vote, in your opinion?

[102] MR. STOTT: Object, unless he knows. A. I don't know.

Q. (By Miss Gallagher) Do you have a belief as to how long it has not been required for a person to be literate, to be able to read and write?

MR. STOTT: Object to that.

Q. (By Miss Gallagher) The rule is that you can answer even though Mr. Stott objects, and then the Court decides whether the objection is—is that correct?

MR. STOTT: Correct.

A. I don't know.

Q. (By Miss Gallagher) Well, has it always been that way?

MR. STOTT: Objection.

A. I don't know.

Q. (By Miss Gallagher) You don't have an opinion about whether people ever had to be able to read and write in order to vote?

MR. STOTT: Objection.

Q. (By Miss Gallagher) Did you answer that question?

A. No.

Q. You didn't answer it or the answer is no? A. Give it to me again.

Q. Do you have an opinion about whether there was ever a requirement that people be able to read and write?

A. Oh, sure.

[103] Q. All right. When did it stop being required?

MR. STOTT: Objection.

Q. (By MIss Gallagher) In your opinion. A. I don't know.

Q. Well, was it three days ago or five years ago or fifteen years ago?

MR. STOTT: Objection.

A. Three or four years ago.

Q. (By Miss Gallagher) Fifteen years ago? A. Three or four.

Q. Oh, three or four years ago. Would that be about the time of the general re-registration in this county? A. That's the time it was, I believe.

Q. About the time of the general re-registration. Now, in forming this opinion about whether people had to be able to read and write from the time of the general re-registration, did you form that opinion on the basis of some public announcement or is that based on what you have seen?

MR. STOTT: Objection.

A. Well, it was just the talk, the general talk.

Q. (By Miss Gallagher) Just the talk. You never saw it published in the newspaper that people didn't have to be able to read and write in order to vote? A. No, I don't remember as I did.

[104] Q. You don't remember the registrar ever making an announcement like that? A. I don't remember it if he did.

Q. Your position as an election judge, were you appointed to that position by someone? A. Yes, ma'am.

Q. Who was that? A. The precinct chairman.

Q. And are you reappointed regularly? A. Every two years, I believe it is.

Q. Is that also by the precinct chairman? A. (Witness nods.)

Q. Are you compensated for your work on election day? do they pay you? A. Yes, ma'am.

Q. Do you have any other duties in connection with elections except on election day? A. No, ma'am.

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BY MR. STOTT:

Q. Mr. Clawson, you don't have anything to do with whether a person registers or not, do you? A. No, sir.

Q. You have no responsibility to give him any test or decide whether they can register at all, do you? [105] A. No, sir.

Q. That is done by the registrar? A. Yes, sir.

Q. And your job is just to be there on election day and keep the election running orderly and to see that no trouble occurs? A. Yes, sir.

Q. And are you appointed as a Democrat julge or a Republican judge? A. Republican

Q. And in that job as judge you don't try to tell anybody how they should vote? A. No, sir.

Q. But if they ask assistance, then that is a matter for the judges to determine, isn't it? A. Yes, sir.

Q. And if somebody comes in and wants to vote and some question arises as to whether or not they are registered then the judges make a determination as to whether that person is eligible to vote at that election, isn't that right? A. That's right.

Q. How many judges do you have at the precinct that you work at? A. Two.

[106] Q. One Democrat judge and one Republican judge. is that right? A. That's right.

Q. If any controvery arises about somebody's right to vote, then the two judges determine it, is that correct? A. And the registrar.

Q. And the registrar. But the registrar presents it to you to determine if there is any question about? A. Yes, sir.

Q. And then you have the decision to make, you and the other judge? A. (Witness nods.)

Q. And that is only in the general election that you work? A. Yes.

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DEPOSITION OF

[109] WILLIAM R. OATES

MR. SCHWELB: May the record show that this witness is white, and I think the records will show the last witness was white also.

BY MR. SCHWELB:

Q. Would you state your full name and address, please, sir? A. William R. Oates, Bessemer City, North Carolina.

Q. What is your principle occupation, Mr. Oates? A. I'm doing nothing now.

Q. Are you retired? A. I had a bad heart attack.

Q. I'm sorry to hear that. [110] A. I haven't been able to do anything for six years.

Q. Are you feeling up to testifying today? A. Well—

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Q. (By Mr. Schwelb) What was your occupation before you had your trouble with your health? A. I farmed.

Q. And how long have you lived here in Gaston County? A. All my life. Seventy-six years.

Q. Have you been a registrar of voters in Gaston County? A. For a little better than ten years.

Q. You are still one now, are you? A. Yes, sir.

Q. And what precinct is that, Mr. Oates? A. Eighteen—or Number Two at Bessemer City.

Q. What are your duties as registrar of that precinct? What do you do? Just briefly tell us what your job is. A. Well, it's to register the names of the voters, and poll the elections—hold the elections.

Q. You have been a registrar for about ten years you say? A. Yes, sir.

Q. Who first appointed you, sir? A. Let's see. I'm not sure whether it was Mr. Hollowell or Mr. Johnson.

[111] Q. Was it the Board of Elections that appointed you? A. Yes, sir.

Q. Do you get a salary for being registrar? A. No, sir.

Q. You don't get a salary? A. Oh, you get a little pay when you have an election.

Q. You get paid around election time, do you? A. Yes, sir.

Q. Do you also get payment for so much per person for each person you register on non-registration days? A. No.

Q. You don't get paid twenty cents per person that you register other than on registration days? A. You get so

much per day or if you don't register a certain number up to that per day, why you get—that's what you get. You get your pay per day whether you register that many or not. I believe that's right.

Q. Are you paid that money by the Gaston County Board of Elections? A. Yes, sir.

MR. SCHWELB: For the record, I would like to state that we ask for the right to examine this witness as an adverse party, as an agent of the plaintiff in this case.

Q. (By Mr. Schwelb) Now, Mr. Oates, I wonder if you could [112] tell us a little bit about what your procedures were for registering voters when you first became a registrar back in about 1956 or 1957; what did they have to do in order to register? A. What do you mean?

Q. With respect to literacy. How did they prove their literacy, or did they have to prove their literacy? A. Oh, yes. They had to read and write.

Q. Now, before 1962 did you give them any kind of a test to see whether they could read and write? A. They had to read and write.

Q. Let me ask you this, sir. Did you discuss this case with agents of the F.B.I. at one time? A. Yes, sir.

Q. Now, you told them the way that you operated the— A. No. I don't believe he asked me that question. I'm not sure but I don't believe he asked that question.

Q. Well, is it true or not, Mr. Oates, that you used to ask people before 1962 whether they could read and write? A. Oh, yes.

Q. If they told you they could read and write, what would you do? A. I would let them register if they proved they could read and write.

[113] Q. What if they just told you without— A. They had the card there. They had the Constitution there, but I generally let them read the oath that I gave them.

Q. Didn't you tell the F.B.I., Mr. Oates, that if they said they could read and write you didn't test them any further? A. No, sir. That wouldn't be true and I know I never told him a lie.

Q. Did you test everybody? Suppose a man was a doctor. A. Yes, sir. I would test him just the same as I would anybody else.

Q. You turned down one man, didn't you, during the whole time? A. No, sir. I didn't turn him down.

Q. What happened with respect to him? A. Well, first I asked him his name and he told me his name and I asked him if he could read and write and he said no, he couldn't. I said—I told him he was going to have to sign a card and he—if he couldn't write I said I didn't know what we were going to do about that, and he cussed a time or two and walked out.

A. And that was the only person? A. That was the only person that I—and I didn't turn him down. He just walked out.

[114] Q. Before the re-registration in 1962 what did they have to read? A. Well, I had a card there that—I can't repeat it.

Q. Was it a card with a section of the Constitution on it. A. I wish I could remember but I don't. It had an oath on it and I generally just used that.

Q. Now, when they read that, did they have to read every word perfectly correct? A. Oh, it they would miss a word, I wouldn't object to that.

Q. What would your object to? A. If they missed a little word—why anybody is liable to do that. Then I would let him write a line of it if he wanted to. If he couldn't sign his name, he couldn't register.

Q. But there wasn't anybody like that? A. No.

Q. You say if they could sign their names. Could they all register if they could sign their names? A. Yes. If he could sign his name, he could register.

Q. He really didn't have to do anything besides signing his name, did he? A. And read.

Q. Read and sign his name? A. That's right.

[115] Q. Now, what about after 1962, when everybody had to re-register, did you have the same test or a different test as before? A. The same test.

Q. Now you say some of these people wrote something, the—I'm sorry. Let me rephrase that question. You mentioned that you gave them a chance to write it if they would rather do that? A. That's right.

Q. Did you do that prior to 1962 and after 1962? A. Yes, on up until—

Q. Did you keep those little things that they wrote down? A. No. We had scrap paper there.

Q. You didn't know about the Federal law which said you had to keep records like that? A. No. I didn't know you had to keep them.

Q. Now, when the new registration came about, did you change your practices at all? Did you have any kind of a test from what you had before that? A. No. It was about the same thing.

Q. About the same test as you have now? A. Well, yeah. Well, if he proved he could read and write, why—

Q. How about right now? Do they have to prove they can read and write now, too? [116] A. Well, for the last, I guess, a year they said not to have no test.

Q. And you stopped having it? A. I stopped having it.

Q. Did there come a time when you started giving people written tests? A. No.

Q. In 1964 and—in about July, 1964, was it brought to your attention there was a new Federal law which said all the literacy tests had to be in writing? A. No, I didn't know anything about that.

Q. You continued to have them read? A. That's right.

Q. And that was right until the Voting Rights Act. A. I guess that's right.

Q. And after the Voting Rights Act was passed, what did you do then? A. Well, when was that passed?

Q. 1965. A. Is that when they eased up, when we quit having these tests?

Q. Maybe I ought to ask you the questions. Otherwise, it looks funny in the record. Let me ask you this. Did you get any communication from the Board of Elections any time in the last four or five years telling [117] you to

change what you had been doing before? A. No, not until they told us not to give the tests anymore. That's the only–

Q. Let me ask you this, Mr. Oates. I show you a sheet of paper and ask you if you ever used this to register people? A. No, sir.

Q. Is your answer no? A. You're talking about this whole thing there?

Q. Is this a sheet of paper that you have ever used in giving a test? A. Not the whole sheet of paper, no. I've used part of this along right here.

MR. SCHWELB: Let me introduce this sheet of paper into evidence as defendant's exhibit eight, please, which has been handed to me by Mr. Stott and is an application for registration of the Gaston County Board of Elections, a blank form, and I would like that to be marked, please.

Q. (By Mr. Schwelb) Now, you're pointing out to me some words you may have used. Where is that? A. The third section.

Q. Would you read that out to us? A. 'The applicant for registration must write or print any one of the following sections of the North Carolina [118] State Constitution on space provided therefor'.

Q. Now, is that language there what you have used? A. I wouldn't say it was just word for word.

Q. Do you have a supply of those forms? A. No, I don't.

Q. All right. A. I have never had it.

Q. And, as a matter of fact, until the Voting Rights Act your test continued to be a reading test? A. That's right.

Q. Let me ask you generally this, Mr. Oates. Where do you register people? A. Where?

Q. Yes, sir. A. At Bessemer City, in the little club house there.

Q. Do you register people in your home, too? A. I have.

Q. How many have you registered in your home? A. Oh, not too many.

Q. Do some of the other registrars register people in their homes, too? A. Yes, I think they do.

Q. Let me ask you this, generally speaking. In the Bessemer City area, do a lot of colored people work for white people there?

[119] MR. STOTT: Objection. Immaterial.

A. Well, there might be in the mills up there, but not too much around—

Q. (By Mr. Schwelb) Do most of the people of both races work in the mills? A. I've got a gang of niggers on my books, a gang of them. Good niggers. Good niggers. And they vote, too. They're all educated niggers, too. They go to school.

Q. When you were a young man, did they go to the same schools as white people or different schools? A. Separate schools.

Q. Was that true until three or four years ago? A. Yes, about two years ago, I guess. I believe last year was the first year they went to school up there. They had a better school up there than the whites had—or did have until last year.

Q. Mostly, do they go to separate churches, too? A. Yes.

Q. And socially the negroes keep to themselves and the white people keep to themselves, is that true? A. Yes, sir.

Q. By and large, the white people have a better income and better homes than the colored people, don't they? A. Yes, but the niggers up there own their own homes. They have a town of their own and they own their own homes [120] up there. There's a lot of good niggers up there.

Q. After the Voting Rights Act was passed and there was no test being given anymore, did you make any public announcement that people could register without reading and writing? A. I maybe have in—

Q. Did you personally make any announcement? A. No.

Q. Since the Voting Rights Act has been passed, do a great many people come in that can't read and write that you have registered? A. Several. Not too many. I don't believe there's been but four or five.

Q. Do you remember they names of any of those? A. No, I don't. I couldn't call a one. But there wasn't but a very few. I was surprised. I thought there would be more than what it was.

Q. White people and colored people both? A. I believe it was about even up.

* * * * *

BY MR. STOTT:

Q. Mr. Oates, you have never denied anybody the right to register that you recall since you have been a registrar, except the one man who started cussing and walked out? A. That's right.

[121] Q. Regardless of what kind of test they instructed you to use, you didn't deny anybody the right to register if they came in there to register? A. No, sir.

Q. And since the new registration system went into effect, do you keep these books open all year except the 21 days before the election? A. No. The way it's set up, I can register anybody if I want to at my home. They can come to my home and register or they can register here in the office.

Q. In the County Elections Office? A. That's right. I have the cards at my home but they can register in the office here any time of the year.

Q. Except the 21 days before the election? A. That's true.

Q. And if anybody comes to your home, at any time of the day or night, and wants to register, you register them if they live in your precinct? A. That's right.

Q. And when the new registration came into effect, did you go to any homes to try to get a lot of people registered? A. No, sir.

Q. But did a lot of people come to your home and come to the polling place to register? A. They came to the voting place but there didn't too many [122] come to the house.

Q. But you were at the polling place so they could register if they wanted to? A. That's right.

Q. Do you remember or do you know how many people are registered in your precinct and were registered there in the last presidential election, approximately? A. Around 700.

Q. And do you know how many of that approximate 700 voted in the last presidential election? A. No, I don't. I'm sorry to say I don't believe I could say that.

Q. You have never denied either white or colored people the right to register since you've been a registrar even though there was a test that you used? A. That's right.

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DEPOSITION OF
[125] LUCILLE M. RAMSEY

Q. Mrs. Inman, I would like you to speak real loud and clear and— A. This is Mrs. Ramsey.

Q. Mrs. Ramsey. I'm sorry. Now, would you state your full name for the record, please, ma'am? A. Lucille M. Ramsey.

Q. And where do you live, Mrs. Ramsey? A. 409 North Modena Street.

Q. Mrs. Ramsey, where were you born, please? [126] A. In Georgia.

Q. And how long have you been living here in Gaston County? A. 41 years.

Q. How old are you? A. I'm 56.

MR. SCHWELB: May the record show that this witness was registered on May the 1st, 1962, in Precinct 51 by Registrar Baumgarner?

Q. (By Mr. Schwelb) Do you have a family, Mrs. Ramsey? A. Yes. I have three daughters. My husband is dead.

Q. And you own your own home? A. Yes, I do.

Q. And do you pay taxes each year? A. Yes, I do.

Q. Have you been a good citizen all your life? A. I hope so.

Q. You never have been in any trouble, have you? A. No, sir.

Q. Now, Mrs. Ramsey, did you have a chance to get much education? A. No, I didn't.

Q. How much schooling have you had? A. Well, I went to the third grade.

Q. Can you read and write very well? A. Not much,

[127] Q. Can you write your name? A. Yes, I can.

Q. Now, how long have you been voting here in Gaston County, do you remember? How many years have you been voting altogether, about? A. Well, I've been voting ever since I was old enough.

Q. Right about the time when you were 21 years old, about that? A. About 21, yes.

Q. Now, when you first voted and first registered to vote did you have to take any kind of a test? A. No, I didn't.

Q. Did you have to read or write anything? A. No, I didn't.

Q. You voted each time? A. Yes, I did.

Q. Now, do you remember back about five years ago when everybody had to register all over again? A. Yes, I do.

Q. Do you remember where you went to re-register? A. Yes.

Q. Where was that? A. A woman came out to our house.

Q. Was that Miss Baumgarner? A. I think it was. Now, I'm not sure. I don't remember [128] that.

Q. Now, did you tell the lady you couldn't read and write? A. Yes, I did.

Q. And did she let you register anyway? A. Yes.

Q. What kind of a test did you have to take? A. She didn't give me no test.

MR. SCHWELB: I would like to introduce into evidence as defendant's exhibit nine what appears to be a photostatic copy of Mrs. Ramsey's registration form.

MR. STOTT: Let me see that.

A. I can tell you the reason she came to the house.

Q. (By Mr. Schwelb) Go ahead and tell us that. A. Well, see, my husband, he had a stroke and he wasn't able to go out, and Mrs. Ramsey, she was old—she was living with us at that time—so she just came out and registered all of us, my daughter and me and my husband, too.

Q. Now, I would like to show you this registration form that we have just been talking about, which is marked exhibit nine. Can you read your name here? A. Lucille Manly Ramsey.

Q. Did you write that or did somebody else? A. I think I wrote that.

[129] Q. Is this your handwriting here? A. I don't know. I'm so nervous now that I don't—

Q. Are you nervous now? Calm down.

(Discussion off record.)

A. Now, my daughter might have wrote that. I just can't remember back that far. Going through what I went through with I really—

MR. SCHWELB: May the record show that the writing on defendant's exhibit nine states Lucille Manly Ramsey by Registrar Betty Baumgarner? Is that all right?

MR. STOTT: If that's what it shows, all right.

Q. (By Mr. Schwelb) Do you vote, ma'am? A. Do I vote?

Q. Yes. A. Yes, I vote.

Q. Does anybody help you when you go to vote? A. Well, see, they always have it upstairs, and my daughter is in a wheelchair, and they let me bring the ballot out and the man I want to vote for—she shows me where to mark it and I go back in and mark it in the stall, but nobody tells me how to vote.

Q. You vote for the candidate you want? A. Yes. I was registered as a Democrat but I vote for the man.

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[130] BY MR. STOTT:

Q. Have you ever been given any kind of test, Mrs. Ramsey, to read or write anything before you were able to register? A. No. I never was.

Q. You always have been able to register when you were required to register? A. Yes.

Q. And you have never been denied the right to vote when you wanted to vote? A. I sure haven't.

Q. In this county, is that correct? A. The reason I forgot to vote in the city election, I forgot to register when they said we had to register to vote.

Q. What is your address? A. 409 North Modena Street.

Q. Have you registered in city elections before? A. Yes, but I don't remember what year.

Q. When you went through the third grade, was that where you learned to write your name? A. No. I guess I quit so young I forgot. When my children was little, Miss Sanburn—I guess you know her—well, her and Miss Hendricks, they had an adult school and [131] I went some at adult school. They met at different houses. Several women sent, you know.

Q. And you learned to write your name? A. I learned to write my name. I wish I had all the checks I had signed. I would be rich.

Q. You sign your name to checks, you say? A. Yes, I sign my own checks. I draw social security. I sign them.

Q. I see. Do you ever read the newspaper? A. Nothing but just sometimes I spell different words.

Q. Can you read any part of the paper and understand what you are reading? A. Well, not too much of it, no. I could if I would take my time, you know, but I just don't have the time.

Q. I see. When you went to register, when everybody in Gaston County had to re-register, this lady came to your house? A. Yes.

Q. So you didn't have to go anywhere to register? A. No, because, see, my husband was in bed and—

Q. Did she ask you whether you could read or not? A. I believe she did. Now, I won't say for sure but I believe she did.

Q Did she ask you if you could write? A. Well, I don't rem ber, to tell you the truth about it.

[132] Q. Can you write anything other than your name? A. I could if I would take the time, you know.

Q. That's the only thing you can do without any trouble much, though, is write your name? A. Yes. I have a driver's license. I've been driving since '60.

Q. When you go to take your driver's license test, do you take a written test? A. No.

Q. They give you an oral test? A. Yes.

Q. They read it to you and then ask you to tell them the answers? A. Yes.

Q. Can you read any part of this writing which you see on this paperwriting identified as defendant's exhibit number two? Can you read any part of that, Mrs. Ramsey? If you can, read what words you can. A. Well, I can't. I would have to spell it.

Q. Can you spell it and then pronounce the words? A. E-v-e-r-y. No. See, I don't—

Q. You don't know what the word is? A. No.

Q. Do you know what the next word is or any of the words on that line or the next line? [133] A. That's t-o. To.

Q. Can you read any of those other words at all? A. No, I can't.

Q. All right. How about pulling this chair up there so you can write your name on this paperwriting for me. Just write it anywhere along there, the way you sign your name. A. The way I sign it now?

Q. Yes, ma'am. A. All right. Look how nervous I am.

Q. Sign it as best you can. You signed it there Lucille M. Ramsey, is that correct? A. Yes.

MR. STOTT: I offer it into evidence as plaintiff's exhibit number three.

MR. SCHWELB: No objection.

Q. (By Mr. Stott) When you go to register, though, you have been able to decide who you wanted to vote for, haven't you? A. My husband never even told me how to vote.

Q. You decided who you wanted to vote for by hearing them on television and hearing people talk about them? A. Seeing them on television and knowing the man.

Q. And listening to them on radio? A. That's right. Things like that.

[134] Q. Listening to them make talks and that sort of thing? A. Yes.

Q. And from those sources you were able to decide which one you thought was best? A. That's right. Sure did.

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DEPOSITION OF
[137] ESBY INMAN

MR. SCHWELB: I would just like the record to show that this witness and the last witness are white, and that this witness was registered on April 29th, 1964, in Precinct Number 62 by Registrar Cauthen.

BY MR. SCHWELB:

Q. Would you please state your full name for the record? A. Sir?

Q. Would you state your full name for the record? Just state what your full name is. A. Tell you what it is?

[138] Q. What your name, is, that's right. A. Esby Inman.

Q. E-s-b-y I-n-m-a-n? A. That's right.

Q. Mr. Inman, where do you live, please? A. At 411 South Weldon, here in Gastonia.

Q. What is your age, please sir? A. 66 years old the 26th of March.

Q. What year were you born, sir? A. Huh?

Q. What year were you born? A. 19–

Q. 19 what? A. I can't say. 1900. Wouldn't that be right?

MR. STOTT: That would be right.

Q. (By Mr. Schwelb) Mr. Inman, what kind of work do you do? A. I run this little old stand at the house there.

Q. You run it yourself, do you? A. Yeah.

Q. How long have you been working here in Gastonia—in Gaston County? A. I've been here something over twenty years.

Q. Where did you live before then? Where did you live before that? [139] A. In South Carolina. Union, South Carolina. I think they call it Pincney Township.

Q. Now, did you have a chance to go to school very much when you were a young man? A. What?

Q. Did you have a chance to go to school very much when you were a young man? A. No, sir. That far back, you know; we farmed. We were raised in the country and you didn't have much chance to go to any school.

Q. How many grades did you go to? A. I think I went a little bit in the second grade, the best I remember.

Q. Do you know how to read and write very well? A. No, sir.

Q. Can you write your name? A. I can write my name.

Q. Can you read anything besides that? A. Well, not nothing much.

Q I would like to show you what appears to be a photostatic copy of your registration form and ask you whether this is your signature down here? A. Yes, sir.

MR. SCHWELB: I would like to have that admitted into evidence as defendant's exhibit ten.

[140] Q. (By Mr. Schwelb) Now, Mr. Inman, how long have you been voting here in Gaston County? A. Well, I've been voting here for twenty years. Over twenty years.

Q. When you first registered to vote here, did you have to take any kind of a reading test or writing test? A. No, sir.

Q. Do you remember back about five years ago when everybody had to register again? A. Yeah.

Q. Where did you go to register again? A. A lady came to the house and registered me.

Q. Did you ask her to come to hour house? A. No, sir. She come to the house and registered me there on the front porch.

Q. Did you ask her to come there or not? A. No, sir.

Q. She decided to come? A. Yeah.

Q. Did she make you read or write anything? A. Yeah. She showed me that little old paper what she had.

Q. Did you tell her you couldn't read? A. She knowed I couldn't. I had to sign my name and all.

Q. Did you read anything else to her besides signing your [141] name? A. No, sir.

Q. Now, I would like to show you, Mr. Inman, defendant's exhibit two. I would like for you to take your time and tell us if there are any words on this exhibit here that you can read. A. I can't pronounce them. I can read the letters.

Q. Where can you read the letters? A. That's an 'E'. P-e-r-s-o-n.

Q. Can you put those together at all and say what words they mean or haven't you learned how to do that? A. I don't believe I could.

Q. Sir? A. No, sir, I don't believe I could.

Q. Don't be embarrassed. We're not saying it's your fault. A. I just ain't got no education.

Q. Now, have you voted here in Gaston County? A. Yeah.

Q. When you go to vote, can you read the ballot? A. No, sir.

Q. Does somebody help you when you vote? A. Yeah.

Q. Who helps you? A. I can't—I know the name as good as I do mine.

[142] Q. Somebody who works there or somebody in your family? A. Somebody who works there. I know his name as good as I do mine. He works for the shop up here.

Q. It doesn't matter if you can't remember the name. A. Well, he's the one who always filled mine out.

Q. Do you own your own home. A. Yeah.

Q. And you pay taxes? A. Yes, sir.

Q. Have you been a law-abiding citizen in this county? A. Sir?

Q. Have you obeyed the laws since you've been in this county and kept out of trouble? A. Yes, sir.

Q. You like to vote—you would like to vote in the future, wouldn't you? A. Yes, sir.

* * * * *

BY MR. STOTT:

Q. You say you just went some in the second grade, is that what you said? A. Yes, sir. * * *

Q. Mr. Inman, you have never been denied the right to register and vote since you have lived in Gaston County? A. No, sir.

[143] Q. And you have always voted in elections in Gaston County? A. Yeah, except in the city elections. I hardly ever vote in them, but I always vote in the county.

Q. And you vote in the presidential elections, don't you? A. Huh?

Q. You always vote in the presidential elections? A. Yes, sir.

Q. You say that the lady that registered you—was that Mrs. Cauthen? A. It could have been.

Q. You didn't know her name? A. No, sir.

Q. You say she showed you a piece of paper. What did she say about the piece of paper? A. I was supposed to have read some on that paper.

Q. Did you try to read it? A. I tried to do the best I could, looking over it, you know.

Q. Did you read any of it to her? A. No, sir, I couldn't.

Q. What did you tell her when she showed it to you, if anything? A. Well, I told her I couldn't read but I could write my [144] name.

Q. Did she tell you then if you could do that you could register? A. Yes, sir.

Q. Then she let you go ahead and register and you signed that registration form, didn't you? A. Yes, sir.

Q. Do you watch television? A. Yes, sir.

Q. When you go to the polls to vote, do you know who you want to vote for? A. Yes, sir.

Q. And how do you decide how you want to vote—for whom you want to vote? A. I'll tell you how I voted this time.

Q. I'm not asking you how you voted. I'm asking you—do you decide how you want to vote—who you want to vote for by hearing it on radio and hearing about them on television and seeing them on television? A. From the speeches and things you just pick out the best man, the one you think is the best man to vote for.

Q. Do you read any of the newspapers? A. No, sir.

Q. You can't read any of the newspaper at all?

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DEPOSITION OF ELIA WEBB

[148] MR. SCHWELB: May the record show, please, that this witness was registered in Precinct Number Three on May the 5th, 1962, by Registrar Cauthen, and this witness is a white person.

BY MR. SCHWELB:

Q. Mr. Webb, I would like you to speak out loud and clear so everybody can hear you. Would you state your full name? A. Elia Webb.

Q. Where do you live, Mr. Webb? [149] A. 308 South Weldon.

Q. Is that in Gastonia, North Carolina? A Yes, sir, Gastonia, North Carolina.

Q. How long have you lived in Gaston County, sir? A. Ever since I was nine years old.

Q. You were brought up here, were you? A. Yes, sir.

Q. How old are you now? A. I'll be sixty-five the 17th of June.

Q. What kind of business are you in? A. I'm in no business. I'm retired. Disability.

Q. What kind of business were you in? A. Worked for Firestone.

Q. How many years did you work for them? A. 25 years.

Q. Do you own your own home? A. Yes, sir.

Q. You pay your taxes? A. Yes, sir.

Q. You've been a good citizen during the time you've been here? A. There ain't nothing against me I reckon. I reckon I have been. I'll straighten it out if there is.

Q. Did you have a chance to go very far in school, Mr. Webb? [150] A. No, I didn't.

Q. How far did you go? A. I went to the second grade. I started in the third.

Q. Did you learn how to read and write very well? A. I can read and write my name. That's about all. I'll just come clean with you. That's what you want to know.

Q. How old were you when you first had to go to work? A. I was eleven years old.

Q. Now, how long have you been voting here in Gaston County? A. Ever since I was 21.

Q. When you were about 21. And when you first registered to vote, Mr. Webb, did anybody give you any test? A. No, they didn't. Not then.

Q. Did you have to read or write anything? A. No.

Q. Did you have to read the Constitution? A. Well, you got somebody to read it back then for you. I could read better then than I can now. I've been sick about eight years and I've forgot about all I knowed, to tell you the truth about it.

Q. Do you remember, Mr. Webb, about four or five years ago when everybody had to register all over again? [151] A. Yes, sir.

Q. Did you register all over again just like everybody else? A. Yeah.

Q. Where did you go to do that? A. Out there at the club house.

Q. And do you know who it was who registered you? A. No, I don't remember.

Q. I would like to show you what appears to be a photostatic copy of your registration form and I would like to ask you if that's your signature? A. That's right.

MR. SCHWELB: I would like to mark this as defendant's exhibit eleven and introduce it into evidence as defendant's exhibit eleven, please.

Q. (By Mr. Schwelb) Now, when you re-registered on that occasion, did anybody make you read or write the Constitution? A. Well, I tried to the best I could.

Q. Did you know how to read the Constitution at that time? A. No, not all of it.

Q. I would like to show you defendant's exhibit number two and I would like to ask you if you can read any of the words on the top of that page? Take your time. A. I can't.

[152] Q. You can't read any of them? A. No. Ain't no use to try. I can't do it.

Q. Now, Mr. Webb, do you still vote? A. Yes, sir.

Q. When was the last time you voted? A. The cit elections.

Q. Did you get some help from anybody when you voted? A. If you need it, you can.

Q. Who helps you? A. Well, anybody that I knew. I knew nearly everybody up in that end of town. If I need any help, I'll call on them. That's the only way I do it.

Q. Do they come into the place where you vote and show you on the ballot the names? A. No. They explain it to me, you know, and I go ahead and vote.

* * * * * *

BY MR. STOTT:

Q. You know who you want to vote for when you go to the polls? A. Yes, sir, I know.

Q. You make up your own mind about that? A. You're right about that. If I want to vote a straight Democratic ticket, I vote a straight Democratic ticket.

Q. How do you vote a straight ticket? [153] A. You mark it in the upper corner.

Q. In the circle? A. Yes, sir, in the circle.

Q. And you're able to tell about that without somebody showing you? A. That's right. If you want to vote Republican, you mark it in the other one. If you want to split the ticket, you pick your men out.

Q. And you're able to pick them out when you— A. I try to.

Q. Yes, sir. When you re-registered at the club house, the Firestone club house, you say that you were asked to try to read some portion of the Constitution? A. I don't remember. I'll be fair with you about it.

Q. You say you could read some but— A. I could kind of go along.

Q. I see. But you do sign your name? A. Yes, sir.

Q. And you sign checks? A. Yes, sir.

Q. And when a check comes to you, you can read that and tell how much it is? A. You ain't kidding. That's right.

Q. You don't have any trouble doing that, do you, Mr. Webb? [154] A. No.

Q. You never have been denied the right to vote in this county, have you? A No, sir.

Q. You've always been treated fairly by the election officials? A. That's right.

Q. You know, of course, Mrs. Cauthen, the registrar out at Firestone? A. Yes, sir.

Q. You've been knowing her a long time? A. Been knowing her a good while.

Q. She's always permitted you to vote and register? A. That's right. She's a nice person.

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DEPOSITION OF

[157] CARL H. HAYES

MR. SCHWELB: May the record show, please, that this witness is a white man, and he was registered on April the 26th, 1962, in Precinct Number 11.

BY MR. SCHWELB:

Q. Mr. Hayes, would you state your name—your full name for the record, please? A. Carl H. Hayes.

Q. Where do you live, Mr. Hayes? A. 1012 Plymouth Street.

Q. Is that in Gastonia? A. Yes, sir.

[158] Q. How long have you lived here in Gastonia? A. I was born and raised in Gaston County, and I moved where I'm at now in '39, the same house.

Q. What do you do for a living? A. Textile work.

Q. How long have you been in that kind of work? A. Practically all my life.

Q. You say you have been living in the same house for sometime. Do you own the house yourself? A. Yes.

Q. You pay taxes? A. Yes.

Q. Have you been a good citizen and been out of trouble the time you've been here in Gaston County? A Yes, sir. I've had just some minor occasions.

Q. Mr. Hayes did you have a chance to get very much schooling? A. No, sir.

Q. How many years of school did you have? A. Well, the way it was, there was sixteen of us in the family, and the four oldest ones—my daddy—we moved. We would stay at one place about two months and then he would move. It would three or four weeks before we would get back in school, and any time we would get straightened out he would move again. All the youngest [159] ones, they got education. But the four oldest ones, they didn't get a chance to get none, and that's the reason I haven't got any.

Q. Did you learn how to read and write your name? A. Yeah, I can read my name and write it.

Q. Besides reading your name, what other reading can you do? A. Just little catches of stuff.

Q. Can you read the newspaper? A. No, sir.

Q. Now, Mr. Hayes, do you vote here in Gaston County? A. Yes, sir.

Q. How long have you been voting here in Gaston County? A. Well, let's see, I don't know. I started voting when I become 21. I voted down here on Franklin. Didn't there used to be a place near Summerow Furniture Store there?

MR. STOTT: Tony's ice Cream?

A. Right in front of Tony's Ice Cream place. I believe that was the first time I voted.

Q. (By Mr. Schwelb) Now, when you first got registered and voted, did you have to take any kind of a reading test and writing test? A. Not the first time.

Q. Do you remember having to re-register back four or [160] five years ago when everybody had to re-register. A. Yes, sir.

Q. Where did you re-register? A. At home.

Q. Who re-registered you, do you remember? A. Well, she was a Long. Jace Long's wife. But I don't really—well, I know she's a Long. She lives at Smyre Mill.

Q. She came to your house? A. Yes, sir.

Q. Did you ask her to come to your house? A. No. She just knocked on the door and I went to the door and that's what she was doing.

Q. Did you tell her whether you could read or write or not? A. I told her I couldn't.

Q. What did she say? A. She read over things to me and as she would read it I would repeat it. I would repeat it over after she read it. Each time she would read I would repeat everything she said, and I helt the Bible and helt my right hand up just like I did over here.

Q. Did she have you sign your name? A. I believe she did. I'm not for sure. I'm not positive but I believe she did.

[161] Q. I would like to show you what appears to be a copy of your registration form and ask you whether this is your signature right down there at the bottom? A. Yes, sir.

Q. Is that your hadnwriting? A. Yes, sir.

MR. SCHWELB: I would like to introduce that into evidence as defendant's exhibit number 12, please.

Q. (By Mr. Schwelb) Now, have you voted since that time? A. Yes, sir.

Q. Where did you go to vote? A. That school up above the—Central School ain't it? It's right down below the bus garage. You know where the county school bus garage is, up this way? Down Seventh Street there, that church—

MR. STOTT: Armstrong School?

A. Armstrong School, yeah.

MR. STOTT: For the purposes of the record, that's what it is.

Q. (By Mr. Schwelb) Mr. Hayes, does anybody help you with marking your ballot when you go to vote? A. Well, if I ask them, they do.

Q. Do you ask them to do this? A. If I want to, I do. Most of the time I go vote I know who I'm voting for and I know their name on the [162] ballot, you see, and if I don't know anybody that's in there I'll ask them to help me, and get permission to do it.

* * * * *

BY MR. STOTT:

Q. Do you remember when I ran for solicitor, Carl? A. Yes, sir.

Q. You voted for me, didn't you? A Yes, sir.

Q. You didn't have any trouble finding that name on the ballot, did you? A. No, I didn't. I voted for Basil Whitener, too. I was raised by him. I worked with him at Smyre Mill.

Q. You say you went to the second grade in school? A. Yes, sir.

Q. But you never did have any education other than—at that time for the reasons which you have already stated? A. Right.

Q. You say you don't read the paper? A. No, I can't read.

Q. When this lady came to the house on this re-registration, she just read this thing to you and you repeated after her? A. I repeated every word she said.

Q. And then you signed your name to the registration slip? [163] A. Yes, sir.

Q. You have never been denied the right to vote in this county, have you? A. No, never have. Any time I go to vote, I get no argument.

Q. Are you registered to vote in city elections? A. I don't think so. I never did go up there to register.

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DEPOSITION OF

[165] HAYDEN CHEATAM

MR. SCHWELB: Would the record show, please, that this witness is a white man, and he registered in Precinct Number 12 on April the 21st, 1962.

BY MR. SCHWELB:

Q. What is your full name, please sir? A. Hayden Cheatam. Hayden Lee Cheatam.

Q. How do you spell your first name? A. H-a-y-d-e-n.

Q. What is your age, Mr. Cheatam? A. Well, I was born May the 16th, 1921. That would throw [167] me about forty-four year old, wouldn't it?

MR. STOTT: Forty-six.

A. Yeah, forty-six.

Q. (By Mr. Schwelb) How long have you lived here in Gaston County, sir? A. Well, I've lived here off and on for the last twelve or fourteen year.

Q. What do you do for a living? A. Well, I do a little mechanic work down at my house.

Q. Pardon? A. I do mechanic work there at my house.

Q. You live at your own house, do you? A. Yeah.

Q. You own it? A. No, I don't own my house. I just rent.

Q. You rent it from somebody? A. Yes.

Q. You pay taxes each year? A. Yes.

Q. Have you been a good citizen of Gaston County since you've lived here? A. I reckon. I ain't been in nothing.

Q. You haven't been in any trouble? A. No.

Q. Mr. Cheatam, how much schooling have you had a chance [168] to get? A. Well, I never did get to go to school none, to tell you the truth about it. See, I was born and raised back in the mountains of Tennessee and my daddy died when ever I was twelve years old, and there was a big family of us. We all had to work. It was back in hard times then.

Q. Did you go to the first grade or the second grade? A. I went a little in the second.

Q. Do you know how to write your name, Mr. Cheatam? A. Yeah, I can write my name.

Q. Besides writing your name, do you know how to read at all? A. I know it when I see it. I can write it.

Q. Your name? A. Yeah.

Q. How about words? A. I can write my name.

Q. Can you read the newspaper? A. No.

Q. Let me show you defendant's exhibit number two, please. Let me ask you if there is any words up there that you know how to read? A. I can't read none of them.

Q. Now, Mr. Cheatam, you stated you have been living here [169] about fourteen years, here in Gaston County? A. Off and on.

Q. How long have you been voting here, about, do you know? A. Well, ever since I registered.

Q. How many times have you registered? A. That one time.

Q. Was that when everybody else was re-registering? A. Yeah, when they bought new books.

Q. Where did you go to re-register—to register at that time, sir? A. Down here at the Flat Rose School.

Q. What did you have to do to register? A. Well, I just went up there, me and my wife, and they gave me a little card and asked me could I read it. I told her no, I couldn't read, but I could write my name. And then she asked me the Constitution, to read it off on a little card, and I answered it and she told me to just go ahead and sign.

Q. Did you read anything from that card? A. No. I couldn't.

Q. I would like to show you what appears to be a photostatic copy of your registration form, and I would like to ask you if that is your signature down at the bottom of it? [170] A. Yeah.

Q. Hayden Cheatam? A. Yeah.

MR. SCHWELB: I would like to introduce that into evidence as defendant's exhibit 13, please.

Q. (By Mr. Schwelb) Now, when you registered on that occasion, do you know the name of the person who registered you? A. No, I don't.

Q. You don't know Mrs. Flora Keever? A. No, I don't. I know it was a woman that registered me but I didn't know who she was. I seen her.

Q. Have you voted since that time? A. Yes.

Q. Did anybody help you when you voted? A. No. Me and my wife, we go up there and vote all the time.

Q. Does your wife know how to read and write? A. Yeah. She's got a high school education.

Q. Does she help you with the ballot? A. Well, there's a ballot in the paper and I check it out from that.

Q. You do what? A. There's a copy of the ballot in the paper, you know, so I always copy it out and I know then where to mark.

[171] Q. Can you read it in the paper? A. No, I can't read it. I know how to mark, though.

Q. You decide on your own who to vote for, do you? A. yes, sir.

Q. You have always been permitted to vote in this county, haven't you? A. Yes, sir.

* * * * *

BY MR. STOTT:

Q. Can you read anything other than your name? A. No.

Q. Do you read the funny paper? A. I can't read nothing.

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DEPOSITION OF
[173] DORIS LEWIS DELLINGER

MISS GALLAGHER: May the record show that there is a Doris Lewis Dellinger, who registered in Precinct Number 32 on May 2nd, 1964. The registrar was Floyd L. Mauney. And that the witness is white.

BY MISS GALLAGHER:

Q Mr. Dellinger, for the record would you state your full name, please? A. Doris Lewis Dellinger.

Q. What is your address? A. Cherryville, Route 2.

[175] Q. And that is in Gaston County? A. Yes, ma'am.

Q. How long have you been living in Gaston County? A. All my life.

Q. How old are you, sir? A. 51, going on 52.

Q. When was the first time you registered to vote? A. Well, I guess when I was 21 years old, I think.

Q. And at that time did you have to pass any kind of a test? A. No, ma'am.

Q. They didn't ask you to read or write? A. No, ma'am.

Q. Let me ask you this, sir—how far did you have a chance to go in school? A. I just went to the third grade. We lived a long way from the schoolhouse. I had to walk about five mile. That's the reason—

Q. Can you write your name, sir? A. Yes, sir.

Q. Can you recognize your name when you see it written? A. Yeah.

Q. Besides reading and writing your name, can you read and write other things? A. No.

[176] Q. You can't read or write anything else. I would like to show you a piece of paper, which is a photostatic copy of the registration form of the person named Doris Lewis Dellinger. Is that your signature, sir? A. Yes, ma'am.

Q. You signed that yourself? A. Yes.

Q. All right. A. Yeah, I'm pretty sure I did. That's my name I'm pretty sure. Me or my wife did, one.

Q. Either you or your wife did? A. Yes.

Q. I see. What is your wife's name? A. Hallie.

MISS GALLAGHER: I would like to introduce this as defendant's exhibit fourteen.

Q. (By Miss Gallagher) Do you remember about five years ago when there was a general re-registration in this county? A. Ma'am?

Q. Do you remember about five years ago that there were new books made for the county and everybody had to re-register? A. Yes, ma'am.

Q. Did you re-register at that time? A. Yes, ma'am.

[177] Q. Where did you register then? A. Cherryville.

Q. In Cherryville? A. Yes, ma'am. Since I built up there where I'm at, that's where I have to go to register. I used to go to Lander's Chapel. That was years ago. I do it now, though, at Cherryville. I went to Tryon a couple times, I believe, when I lived up there with my daddy.

Q. Do you remember who the registrar was when you went to re-register then? A. This last time I believe it was Coleman Jenkins.

Q. When you went to re-register that time, about five years ago, did the registrar ask you to read anything? A. No.

Q. Did he ask you to write anything? A. No, ma'am.

Q. But you signed your name to the registration card, as best you recall? A. Right.

Q. If he had asked you to read a sentence from the Constitution, could you have read it? A. He read it off hisself.

Q. Did you say it after him? A. Yeah, I believe I did.

Q. I see. Have you been voting since then? [178] A. Yeah. I've voted. I haven't voted since the presidential election.

Q. Since the last presidential election? A. I don't believe I have.

Q. When Mr. Johnson and Mr. Goldwater ran, you voted then? A. Yeah. I had to register before then.

Q. When you go in to vote, does somebody usually help you? A. My wife usually does.

Q. Can you wife read and write all right? A. Yes.

Q. She goes into the voting booth with you? A. Yes, ma'am.

Q. You tell her which candidates you want and she shows you where to mark them, is that right? A. That's right.

* * * * *

BY MR. STOTT:

Q. You way you went to the third grade? A. That's right, yes, sir.

Q. Is that where you learned to write your name? A. Yes, sir.

Q. Have you been able to write your name since that time? A. Yeah. I can write my name.

[179] Q. Do you read the newspapers? A. No, I can't read at all.

Q. Can you read the voting ballot when you see it? A. No.

Q. Do you ever see a sample ballot in the newspaper before an election? A. Yes.

Q. Can you read that? A. No. I don't read. I just get my wife to read it. I pick out who I want to vote for and—

Q. You make up your own mind who you want to vote for? A. That's right.

Q. Do you do that by listening to them talk on radio and on television? A. Yes, sir. Just like the Sheriff's election. I always voted for Mr. Dwight Beam. He lived up there where I do.

Q. Did you read his name on the ballot? A. No.

Q. Have have never been denied the right to vote in Gaston County, have you? A. No, sir. I've voted ever since the first time I ever registered. I've been voting ever since.

Q. Have you tried to learn to read since you got out of [180] school in the third grade? A. No. I just work all the time.

Q. You say you can't read anything? A. No.

Q. When you went to register the last time, were you asked by anybody to read anything? A. No.

Q. Were you asked to write anything? A. No, sir.

Q. You weren't asked to copy a sentence of any kind, were you? A. No. I wasn't asked to do nothing.

Q. Were you asked whether you could read or write or not? A. No. They didn't even ask me.

Q. Do you know Floyd Mauney? A. Yeah, in Cherryville.

Q. He's from Cherryville? A. Yes, sir.

Q. Do you know whether or not that is the one who gave you the oath the last time you registered? A. Yeah, that's right.

Q. But you remember that Coleman Jenkins had sometime in the past registered you? A. They was both there together.

Q. Floyd Mauney and Coleman Jenkins?

[181] Q. Coleman Jenkins is the one who works here in the courthouse—or used to? A. Yes, he used to. I think he's retired now.

Q. Yes, sir. But you do say you do remember signing your name to this? A. I either signed—

Q. This paperwriting, which is defendant's exhibit number 14, sir, you did sign it? A. yeah, or my wife one. But I'm pretty sure that's me, though.

Q. All right. Did you and your wife register at the same time? A. Yes, sir.

Q. You can't ready anything in the newspaper? A. No.

Q. You can't even read the funny papers? A. No. I don't even fool with it.

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DEPOSITION OF
JOHN RAY McGEE

[183] * * * * *

BY MR. SCHWELB:

Q. Mr. McGee, could you state your full name, please, for the record? A. John Ray McGee.

Q. Where do you live, Mr. McGee? [185] A. I live down here right up on Pack Street back of Smyre.

Q. Is that in Gaston County? A. Yes, sir.

Q. How old are you, sir? A. About forty-three. Somewhere along there.

Q. Do you know what year you were born? A. March 10th I believe it was.

Q. March 10th. Do you know what year that was, sir? A. Not exactly I don't. About 1909, something like that.

Q. Mr. McGee, what kind of work do you do? A. I did run cards in the mill and I hurt my back and I'm sweeping now. I've been sweeping for a good little bit.

Q. How long have you lived here in Gaston County, about? A. Well, I come down here back during the war, and have been here ever since. I just don't remember what time that was.

Q. Have you been a good citizen? Have you kept out of trouble here in Gaston County? A. I haven't been in no trouble as I know of. I try always to stay at home and tend to my business.

Q. Are you married, Mr. McGee? A. Yes, sir.

Q. Do you have children? [186] A. I've got one boy.

Q. Is he going to school now? A. Yes, sir.

Q. Now, Mr. McGee, did you have a chance to get very much education? A. No. See, my daddy, he stayed gone all the time, and my mother, she had to work, and I didn't get no education on account of I had to stay and tend to the kids.

Q. Where were you brought up? A. Marion. I was born in Old Fort, and we stayed up there about four or five year, something like that, and moved to Marion, and I was raised up up there.

Q. Do you know how to read and write, Mr. McGee? A. No, sir.

Q. Can you write your name? A. I can kind of scratch my name a little bit.

Q. You never had a chance to learn how to read other things? A. No, sir.

Q. Now, Mr. McGee, can you remember roughly how long you've been voting in— A. Well, I ain't voted here lately. I voted about two or three times is all.

Q. How old were you when you first started voting, do you [187] remember? A. It's been about two or three years.

Q. How many times have you registered, one time or more than one time? A. One time.

Q. I would like to show you what seems to be— A. To the best of my knowledge, one time is all I registered.

Q. Can you recognize your signature? A. Yes, sir. I can tell my handwriting—scratching.

Q. I would like to show you what seems to be a photostatic copy of your registration form and ask you whether that is your signature down here? A. Yes, sir. That's my scratching.

Q. Did you write that? A. Yes, sir.

MR. SCHWELB: Now, I would like to mark this and introduce it into evidence as defendant's exhibit 15. A. I'll tell you—I can't remember like I used to. I have a ulcerated stomach and stay sick about all the time and I just can't remember like I used to.

Q. (By Mr. Schwelb) Well, when you first registered—this application here shows that was on October the 11th, 1962—were you able to read at that time? [188] A. No, sir. I could just kind of halfway write my name a little bit, scratching it.

Q. Mr. McGee, do you remember where you went to register? A. I registered up there at the m ll in the office.

Q. In the office at the mill? A. Yes, sir.

Q. Do you remember who it was who registered you? A. No, sir, I don't. See, we was in there and he come in there kind of registering us, and so we just quit off of our

job and went to register and got back to work as quick as we could.

Q. Did the person who registered you ask you if you could read and write? A. Yes, sir.

Q. What did you tell him? A. I told him no.

Q. They let you register anyway? A. Yes, sir.

Q. Did they let you try to read anything? A. No. I think I just told him—he give me a paper there for me to fill out and I told him I couldn't read or write. I didn't even know a thing that was on it. And he read it over to me and I went ahead and signed the paper and that was it.

Q. Have you voted since then? [189] A. Yes, sir.

Q. Did somebody help you when you voted? A. Yes, sir.

Q. Who helped you? A. I don't remember who it was. Some people at the schoolhouse.

Q. People who were working there? A. Yes, sir. I don't know whether they were from up here in town somewhere or what, but I just went out there. See, I got off at the mill and they come out at the mill and picked us up and took us out there to vote and brought us back.

Q. Mr. McGee, when they came out to the mill to register all the people, did they register a whole lot of people working at the mill at that time? A. Well, I don't know. See, whenever you're working, you don't have time to notice much.

Q. Did you ask anybody to come and register you? A. No, sir.

Q. You just happened to be there? A. They come through the mill wanting to see how many they could get to vote.

Q. What was the name of the mill you were working for at that time? A. Smyre Mill.

[190] Q. Did all the people who worked there know how to read and write? A. Well, I won't say all of them but just about all can.

MR. STOTT: Object to that.

Q. (By Mr. Schwelb) You can answer the question. A. Just about all of them, I think.

Q. About all of them could? A. A few of them, I imagine, can't read and write. Just about all of them can.

Q. Do you know if some of those others were registered at that time, too?

MR. STOTT: Objection.

A. I don't know. I just went in and went back to my job.

* * * * *

BY MR. STOTT:

Q. No one at the mill, Mr. McGee, made you go register, did they? A. No.

Q. They told you if you wanted to go register, you could is that right? A. That's right.

Q. And you wanted to register, didn't you? A. I went to register.

Q. But you went because you wanted to, didn't you? [191] A. Because I wanted to, that's right.

Q. And you never have been denied the right to vote if you wanted to vote, have you? A. No.

Q. And at voting time they come to the mill and tell you if you want a ride to the polls there is somebody to take you. A. That's right.

Q. And you go vote for whomever you want to vote for, don't you? A. That's right.

Q. Have you ever been able to read anything? A. No.

Q. A newspaper or anything like that? A. No.

Q. Do you ever look at the paper? A. Oh, I might look at the funny paper or something like that, pictures, but as far as reading, I can't.

Q. You can't read the funny paper either, but you look at the pictures sometimes? A. That's right.

Q. You say you were raised up in Marion, North Carolina? A. That's right.

Q. You lived up in the mountains around Old Fort? A. I was born in Old Fort.

[192] Q. You lived there for four or five years and then your family moved to Marion? A. That's right.

Q. That's in McDowell County, isn't it? A. I think so.

Q. Where did you learn to write your name? A. Well, I've learnt it since I went to work in the mill. I had to sign my check and I just practiced until I got to where I could kind of write it a little bit.

Q. Do you watch television? A. Yes, sir, I watch television sometimes. I don't care too much about it.

Q. I see. But when you go to vote, you decide before you go to the polls who you want to vote for, is that right? A. Well, no. I just get up there and whoever I think is the best man, that's the one I vote for.

Q. That's right. A. They tell me the names and—

Q. Then you vote, though, for whoever you think is best? A. That's right.

Q. And how do you decide who you think is best, by looking at television or what? A. No. The way I do that—if it's somebody I've heard them talk about in the mill there or if they've done [193] something another like water rights or something another like that I vote for them.

Q. If they say they're for some things you're for, that is who you want to vote for? A. That's right.

Q. And if they're for reducing taxes, you're in favor of that person aren't you? A. Well, anything to cut taxes I'm for.

Q. That's what I say. A. I'm for that.

* * * * *

(By Mr. Stott) Mr. McGee, I want to ask you one other question. I want you to write your name, please, sir, if you will, here on this piece of paper. Just write it across there. Any place will be all right. The way you sign your name. A. I'm kindly nervous.

Q. That's all right. Just sign it as best you can.

Q. All right, sir. Thank you. On this paperwriting, which has been identified here as plaintiff's exhibit number four, you signed your name 'John R. McGee' is that correct? A. That's right.

MR. STOTT: I offer that as plaintiff's exhibit four into evidence.

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DEPOSITION OF
[197] MARVIN ALEXANDER HELTON

MR. SCHWELB: May the record show that this witness is white and was registered on May the 2nd, 1962, in Precinct 44, and that the registrar was Allie M. Rhyne.

BY MR. SCHWELB:

Q. Would you state your full name, please, sir? A. Huh?

Q. Would you give us your full name? A. Marvin Helton. Marvin Alexander Helton.

[198] Q. Where do you live, sir? A. Huh?

Q. Where do you live? A. Stanley.

Q. Is that in Gaston County? A. Yeah, in Gaston County.

Q. How old are you Mr. Helton? A. Huh?

Q. How old are you? A. Sixty-two years old.

Q. Where were you born? A. Well, Lincoln County. As well as I remember, the last time I ever heard anything said was when I was a little kid. It seems to me I heard them say I was born in Lincoln County, but I want to get this straight now.

Q. You think it was in Lincoln County but it could have been in Gaston County? A. No, I wouldn't say it was in Gaston County. It wouldn't make any difference so much. I believe we'll have in Lincoln County.

Q. That's fine, Mr. Helton. Let me ask you this—how have you lived here in Gaston County? A. Well, for a long time. I was just a little kid when we moved into Gaston County.

Q. Were you brought up here in Gaston County? [199] A. I was raised here.

Q. What kind of work do you do, Mr. Helton? A. Well, I don't do any now. Nothing only just piddle about. I retired back in October.

Q. What kind of work did you do before you retired? A. Anything. I sanded floors and I shellacked floors. I helped run cards a day or so. I've been working ever since I was a kid. I went to work when I was about ten years old.

Q. When you were ten years old you went to work? A. Ten or eleven years old. I've been working for years and years.

Q. Mr. Helton, do you own your own home? A. No, I rent.

Q. But you pay taxes each year? A. Huh?

Q. You pay taxes? A. Yeah. In other words, I don't have to pay on the home but I have a tax to pay. See, I have a county tax to pay and a little bit of income tax.

Q. You pay them each year, do you? A. Yeah. I've paid them every year.

Q. You haven't been convicted of any crimes, have you, Mr. Helton? A. Not that I know anything about. They claimed that I [200] had one of the best records they knew of in the whole of Gastonia.

Q. You testified that you had to go to work when you were about ten. Did you have a chance to go to school very much before that? A. Huh?

Q. Did you have a chance to go to school very much when you were a boy? A. I'll tell you—back at the time that I started to school as a kid, they didn't actually make you go. Of course, my mother and father, they should have wanted me to go. But we all got down sick one day and that was a long time in bed. I was the first one up and I chopped firewood and I done this and I done that, and I kind of just waited on the family the best I could, you know. So I just never do go back to school any more.

Q. Did you learn how to write your name? A. All I can do is about halfway print it. He asked me could I print my name. I told him sometimes I can just go right up there and then again I'll make a mess of it. I just let somebody else do it who knows how to do it right.

Q. Besides printing your name, can you read any words in the newspaper or anything like that? [201] A. No.

Q. Are you married, Mr. Helton? A. Oh, yeah. I've been married for about—I don't know—about nine or ten years or more, I 'spect. Maybe eleven.

Q. Do you have children? A. I've been married it seems to me like—I know its been at least—seems to me like she said we've been married about ten or eleven years. I don't know. We've been married a good while.

Q. That's all right. We don't haye to know exactly how long. A. I thought maybe you needed it.

Q. Do you have any children? A. Huh?

Q. Do you have any children? A. No.

Q. Now, Mr. Helton, since you've been here, have you been a voter in Gaston County? A. Yes, sir. I voted in Gaston County?

Q. Did you start voting when you were a young man? A. Huh?

Q. How old were you when you first started voting? A. 21, I believe. I believe I was 21.

Q. And did you vote regularly from the time you were 21? [202] A. Yes, sir.

Q. When you first registered, did they ask you to read or write anything? A. Huh?

Q. When you first registered to vote, did they have you read or write anything? A. They asked me to but I had to have someone to help me. It was way back there. I don't remember. I just asked different ones—the ones I knew on the party I wanted to vote for. I asked them to help me and they would help me.

Q. Let me ask you more recently—do you remember when they got new books and everybody had to register again back about five years ago? A. Well, I've always been—

Q. I don't think you quite understand my question. About four or five years ago they had new books in the voting you know. Do you remember when everybody had to register all over again? A. Uh huh.

Q. Do you remember that? A. Well, my wife helped me out that time.

Q. You say your wife helped you out? Where did you go? A. Huh?

Q. Where did you go to re-register? [203] A. We went over there—they've got a little place over there towards the

schoolhouse, a little old place over towards the schoolhouse, a little building over there. It's a nice building. It was over there towards the schoolhouse.

Q. You went there with your wife, did you? A. Yes, sir.

Q. Now, do you know the person who registered you? A. Well, Miss Rhyne always was the one who—

MR. SCHWELB: May the record show that's spelled R-h-y-n-e? A. Allie is her name. Allie Rhyne. She used to be Allie Mason back before she was married.

Q. Mr. Helton, I would like to show you what appears to be a photostatic copy of your registration form and I would like to ask you if part of this here is in your writing? A. No. That isn't right.

Q. Did you write this 'Marvin' here? A. Not as I remember anything about, no.

Q Well, does your wife know how to read and write? A. She knows how to read and write but I don't believe she wrote that.

Q. You don't recognize this printing here? A. I sure don't.

[204] MR. SCHWELB: I would like to introduce this form as defendant's exhibit sixteen, please. A. I don't remember. Now, I may have tried to write that and forgot about it but—

Q. Did you tell Miss Rhyne that you didn't know how to read and write? A Yeah. She knew it.

Q. And what did you have to do in order to register? What did she have you do in order to register? A. The only thing—all I know is she just asked me—

Q. Speak more slowly, please, because the reporter is having trouble understanding you. Would you tell him what it was that Miss Rhyne had you do when you registered? A. I don't guess she had me to do anything because there wasn't anything that I could read and write. Wasn't anything I could do.

Q. She didn't have you read the Constitution? A. I couldn't read it. I can't read. That's just all. I can't read, and I can't write.

Q. And did you tell that to Miss Rhyne? A. I had to. You call Miss Rhyne if you want to. She's got a telephone. Call her and ask her. See what she says about it.

Q. We Believe you. [205] A. Maybe I won't have to come back on account of something if you can get it straight here.

MR. SCHWELB: Off the record.

(Discussion Off Record.)

Q. (By Mr. Schwelb) Let me ask you this further question and after Mr. Stott has asked you some questions I think you can go home. Have you voted since you registered there with that lady—since Miss Rhyne registered you? A. Oh, Lord, I've voted. I've been voting in every election that I can remember. If I've missed one, I certainly forgot it because I have always went to vote. Most of the time.

Q. When you go vote, where do you go to, sir? A. Huh?

Q. Where do you vote? A. At the same place I was telling you, there this side of the schoolhouse, on the left.

Q. Now, does anybody help you when you vote? A. Yeah. I always have somebody to tell me the line, you know.

Q. But you tell them which candidate you want to vote for? A. I tell them the one I want to vote for.

Q. Who is it that helps you? A. My wife. See, when she goes with me, she reads it off [206] to me and asks me do I want this one or do I want that one.

Q. Does she go into the voting booth with you? A. She goes in that place with me.

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DEPOSITION OF

[209] JOHN HOWARD MATTHEWS

MISS GALLAGHER: Ma the record show that John Howard Matthews was registered on May 12th, 1962, in Precinct Number 6 by Registrar Dorcas Kelly, and that he is white.

BY MISS GALLAGHER:

Q. Mr. Matthews, for the record would you state your full name, please? A. John H. Matthews.

Q. Where do you live, sir? A. Ma'am?

[210] Q. Where do you live? A. West Gastonia. 105 Washington Street?

Q. 105 Washington Street? A. Yes, ma'am.

Q. How long have you been living in Gastonia, sir? A. That's pretty hard to remember but I believe it was '45 that I came here. I believe it was.

Q. All right, sir. A. To the best of my remembrance.

Q. When you answer my questions, would you speak up as loud as you can, please, so that the reporter will hear you. Are you registered to vote in Gaston County, sir? A. Yes, ma'am.

Q. When was the first time that you registered? A. Well, I believe it was in '62. That record there shows it.

Q. Was that when everybody had to re-register? A. For the main election.

Q. When you registered, where did you go? Was it at the polling place in your neighborhood? A. It was at the Myrtle School.

Q. I see. When you went up to register, did the registrar ask you to read and write anything? A. I wouldn't be too sure but I believe—I ain't too sure. [211] It's been you know—it's hard to remember but it seems to me like she asked if I could read and write and I told her no, I couldn't.

Q. All right. What happened then? A. Well, she said I would have to sign my name and I told her I could bearly scribble my name and that's all I could do.

Q. How much did you get a chance to go to school, sir? A. Well, I haven't had no chance much. I went just a little while in the first grade. I wouldn't say how long but it wasn't but a little while.

Q. Where was that, here in Gaston County? A. No, ma'am. That was in Swain County.

Q. Did you ever learn how to read? A. No, ma'am. bearly know my name and can bearly scribble my name, but some words in print I can read; maybe a word or two in print.

Q. All right. I would like to show you a piece of paper– A. Now, my eyes is not too good. My left eye is gone but I can see some out of my right eye.

Q. All right. I just want you to tell me what words on this piece of paper you can read, if you can read any. This is marked defendant's exhibit two. I just want you to take all the time you need and look at that top line and tell me the words you can read. A. Well, I'll try.

Q. You just try. A. E-v-e-r-y. P-e-r-s-o-n. I can't–

Q. You can read the letters real well, can't you? Do you know what that word is? A. No, Ma'am. P-r-e-s-e-n-t-i-n-g.

Q. All right. Let me ask you this–are there any words in the sentence that you can pronounce? A. No, ma'am. There might be some words I could pronounce. I'll hunt and see if there's any words I can pronounce. Take my time you say?

Q. Yes, sir. A. Here's a word I can pronounce. The. T-h-e.

Q. All right. Very good. A. Let me see about these other words. I'm just taking up y'alls time.

Q. That's perfectly all right. A. I want to see what I can do. To. T-o.

Q. All right. Very good. A. And. A-n-d. I can get that. In and the. I can get that. In. The.

Q. All right. Fine. A. W-r-i-t-e. Is that write? That's about all I can find on there that I can pronounce and can read.

Q. Okay. That's real good. Now, when you went to [213] register, if I understand you correctly, you said that the registrar asked you if you could read? A. I think so, could I read and write. I ain't too sure but I believe she asked my wife, and I said I could read my name and could scribble it a little bit.

Q. But you don't remember reading anything to the registrar? A. No.

Q. Okay. I'm going to show you another piece of paper now. This is a photograph of what seems to be your regis-

tration record. Is that your name right there at the bottom? A. John H.—is that Myrtle—M-a-t—I wrote that, didn't I?

Q. That's what I want to know. You think you wrote that? A. That's—that looks like my name there.

Q. All right. A. M-a-t-t-h-e-w-s. That's my name. But this right here is what I can't—that's John I believe. John H. Yeah. And what is this?

MR. STOTT: She just wants to know if that's your signature. A. That's my signature, but that there other has me stuck.

[214] Q. (By Miss Gallagher) That's fine. That's your signature.

MISS GALLAGHER: I would like to introduce this as defendant's exhibit number 17.

Q. (By Miss Gallagher) Since the time that you registered have you voted, Mr. Matthews? A. I voted that time and seems like I've voted since then. I ain't too sure. I can't hardly remember all these things but seems like I voted—I voted in the main election. I know that.

Q. When you go to vote, does somebody go into the booth with you to help you with the ballot? Does your wife go in with you? A. No. They won't allow folks to go in with you, I don't think. Some lady went in there with me. I don't recall her name or who she was, but I asked somebody to. Anything I didn't know to tell me, you know.

Q. Did you explain it to you? A. Yeah, what I asked her about.

Q. All right. You told her who you wanted to vote for and she showed you where that was, is that right? A. I had to ask her the names, you know, and she would tell me the names but she didn't do no work. I done the marking. I just asked her who the man was and what their names was. Now, I'm honest about it. I [215] believe that's the truth.

Q. All right, sir. Just a couple more questions. Have you been a good citizen all the time you've been in Gaston County? A. Yes, ma'am.

Q. You've taken a little bit of interest in politics, what was going on in the county? A. I listen a whole lot to the arguing.

Q. You know who you want to vote for when you go to vote? A. I know the man when I vote for him.

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DEPOSITION OF
[218] HIX WELLMAN

MISS GALLAGHER: May the record show that Hix Wellman was registered on May 5th, 1962, in Precinct 13 by Registrar Inez Whitener, and that the witness is white.

BY MISS GALLAGHER:

Q. Mr. Wellman, would you state for the record, please, your full name? A. Ma'am?

Q. Your full name— A. My full name? Hix Wellman is my name. Hix is my given [219] name and Wellman is my surname.

Q. Where do you live? A. I live in Smyre—Smyre Mill. I've been down there about fifty years.

Q. Is Smyre in Gaston County, sir? A. Yeah, it's in Gaston County.

Q. Are you registered to vote in Gaston County? A. Well, when they had the new registration I registered. How long ago has that been? Just before the election is when I registered.

Q. Was that when everybody had to re-register? A. That's right.

Q. Were you registered before that or was that the first time you ever registered? A. We didn't have to register no more. They made that new rule, you know, to register in—

Q. Right. But before that time—before the time when everybody had to re-register, had you been registered to vote before that? A. Oh, yes, ma'am. I've voted ever since I've been down here.

Q. Ever since you came to Gaston County? A. That's right. I left my county when I was 25 years old. Ever since I've been down here I've voted.

Q. Did you get a chance to vote—did you get a chance to [220] go to school much when you were a little boy? A. No, ma'am. I had to work.

Q. How far did you get to go to school? A. I didn't go none hardly.

Q. I see. How old were you when you had to start to go to work? A. Ma'am?

Q. How old were you when you had to go to work? A. I was just a little bitty fellow. Just big enough to hold up a hoe handle.

Q. Do you remember how old you were? A. I don't remember how old I was but I would get up on a stump to eat dinner. I was just a little bitty fellow.

Q. Now, when you went to register, when everybody was re-registering a few years ago, did the registrar ask you if you could read and write? A. Well, they had me put my hand on the Bible and then told me to go down and write my name. I could sort of scribble my name but that's about all I can do.

Q. Besides your name, can you read and write at all? A. No, ma'am, I can't read and write.

Q. Okay. Did the registrar ask you whether you could read and write, do you remember? A. Ma'am?

[221] Q. When you went to register a few years ago. did the man or lady was was there ask you whether you could read and write? A. I don't remember whether he did or not. I just don't remember.

Q. But you couldn't read and write at that time any more than your name? A. Ma'am?

Q. You couldn't read and write at that time any more than your name? A. That's right.

Q. Are you employed right now? Do you work? A. Well, no, lady. I worked pretty hard. I've got about fifteen houses I'm renting.

Q. Can you speak up a little bit so that the reporter can understand what you say. When you answer my questions, could you talk a little louder? A. I'll do the best I can.

Q. Very good. What did you used to do when you were working? What did you used to do? A. I was raised on a farm.

Q. And after that? A. Well, I stayed on the farm until after I was married. I was 25 years old—when I was 25 years old, I moved to Gastonia and I worked 12 years in the mill, Smyre [222] Mills, and the doctor told me I ought to get out of the mill and I drove a taxi 45 years.

Q. When you were driving a taxi, and when you were working in the mill, did you pay your taxes regularly? A. Yes, ma'am.

Q. Every year? A. Yes, ma'am. I always pay my taxes.

Q. You've been a good citizen in Gaston County? A. Yes, ma'am. Ain't nobody got nothing against me.

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Q. (By Miss Gallagher) I would like you to look at this piece of paper, Mr. Wellman, and tell me if that's your signature down there at the bottom? A. Whereabouts?

Q. Right here at the bottom? A. Right there?

Q. Right there? A. I don't know if I can get all my writing on there or not. Right here, is that right?

Q. That's right.

MR. STOTT: Right there. Is that your signature right there? Did you write that? A. Yeah. I think that—

[223] MR. STOTT: Did you write that yourself? Is that your signature, the way you write your name? A. Would you mind letting me show you how I write?

MR. STOTT: She's asking you if that is the way you sign your name.

A. Yeah. H-i-x. W-e-l-l-m-a-n.

MR. STOTT: Can you see that? A. Yeah.

MR. STOTT: That is the way you write your name, isn't it? That's your signature right there, isn't it? A. Yes, sir.

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DEPOSITION OF
[226] MARTHA DUNLAP ROLLINS

MARTHA DUNLAP ROLLINS BEING first duly sworn, was examined and testified as follows:

MISS GALLAGHER: May the record show that Martha Dunlap Rollins was registered on October 10th, 1964, in Precinct Number 9 by Registrar Mary L. Friday, and that this witness is white.

BY MISS GALLAGHER:

Q. Mrs. Rollins, would you state for the record, please, your full name? A. Martha Dunlap Rollins. I was a Dunlap before I was married.

Q. Where do you live, ma'am? [227] A. 1017 East Airline Street.

Q. Is that in Gastonia? A. Yes, ma'am.

Q. How long have you been living there, ma'am? A. Well, I just can't hardly tell you when I moved there.

Q. How long have you been living in Gaston County? A. About eighteen years. I don't know exactly the date it was when I come here but—

MR. STOTT: Just as near as you can remember is all right. A. It's been about eighteen years.

Q. (By Miss Gallagher) Where did you live before that? A. In Charlotte.

Q. And how old are you, ma'am? A. Well, I was born in 1900. This August I'll be 67.

Q. How much did you have a chance to go to school? A. I didn't have no chance to go.

Q. Didn't you get a chance to go to school at all? A. No. I went about a couple weeks but that was all.

Q. Did you ever learn how to read and write? A. No, ma'am.

Q. Can you sign your name though? A. No, ma'am.

Q. You can't sign your name? A. No, ma'am, I can't.

[228] Q. Are you registered to vote in Gaston County? A. Yes, I registered the last time up here on South Street.

Q. Was that the first time you had ever registered to vote in this county? A. No, ma'am.

Q. You had been registered before that? A. Yes, ma'am.

Q. When was the first time you registered, as best you can remember? A. Well, to tell you the truth, I can't remember. It seems like it was out here at the club house at the Firestone mill on 74 highway.

Q. The first time you registered to vote, did the registrar ask you whether you could read and write at all? A. I don't remember. See, I didn't have to sign my name at all. They did it for me.

Q. I see. Now, when you registered this last time, just a few years ago, do you remember whether the registrar gave you a piece of paper or not to fill out? A. Yes, ma'am. She gave me a piece of paper to practice on. It taken me nearly an hour to practice what I could do.

Q. Did the registrar tell you that you would have to fill out a piece of paper? [229] A. The lady told me, yes, ma'am.

Q. And what happened then? A. Well, I didn't fill it out exactly right and I asked her could my sister help me a little, and she said she can't take the pencil or the paper at all. She said she could tell me and stand behind my chair, and she did. This is my sister over here, the one that told me.

Q. Did you sister help you by telling you which letters were which that you were writing with the pencil? A. Yes, she told me which was which.

Q. I see. Now, I'm going to show you a piece of paper, Mrs. Rollins. This is a photograph of your registration slip. And I ask you—down at the bottom, is that printing that you did? A. Yes, ma'am. It looks like it.

Q. Okay. Fine.

MISS GALLAGHER: I would like to introduce this as defendant's exhibit 19.

Q. (By Miss Gallagher) Now, I'm going to show you another piece of paper, Mrs. Rollins, and I would like you to tell me if those are the letters that you printed when your sister told you what they were? A. Yes, ma'am, it looks like it. That's just like the piece of paper I fllled out.

[230] Q. All right. Fine.

MISS GALLAGHER: I would like to introduce this as defendant's exhibit 20.

Q. (By Miss Gallagher) Since you registered, Mrs. Rollins, have you voted? A. You mean when I did register?

Q. Did you ever vote in an election since then? A. Since I voted for the president, no, ma'am.

Q. You did vote for the president? A. Yes, ma'am.

Q. Was that when Mr. Kennedy and Mr. Goldwater—I'm sorry—Mr. Kennedy and Mr. Nixon were running, or was it when Mr. Johnson and Mr. Goldwater were running? A. It was Mr. Johnson and Mr. Goldwater.

Q. When you went to vote, did your sister go with you to the polls to help you? A. Yes, ma'am, she went with me.

Q. She went into the booth with you? A. Yes, ma'am.

Q. And did you tell her who you wanted to vote for and she showed you how to do that? A. Yes, ma'am, she did.

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BY MR. STOTT:

Q. You have always been able to vote since you have lived [231] in Gaston County, haven't you? A. Yes, sir.

Q. And when you would go to the polls to vote, you voted for the person that you wanted to vote for, didn't you? A. That's right.

Q. You've never been denied the right to vote in Gaston County, have you? A. No.

Q. You've always been given good treatment by the election officials in Gaston County, haven't you? A. Yes, sir.

Q. That's during the 18 years you've lived in Gaston County. A. Yes, sir, but I ain't voted every time since I've been in Gaston County.

Q. But when you wanted to vote, you've been able to vote? A. That's right.

Q. This piece of paper that she asked you about, which is defendant's exhibit number 20, did you copy this sentence and this is the printing that you did, is it not, Mrs. Rollins? A. Yes, sir. I did that.

Q. And you did it by yourself? A. Well, my sister there helped me some.

Q. How did she help you? [232] A. Well, there was several letters I just messed up on a piece of paper they give me. I couldn't do it. I got right nervous over it and I told them I couldn't do this, I just don't believe I'll vote, and I said could my sister help me out a little bit. And she said, oh, you can do it, come on. S. said, 'You can print your name, can't you', and I said, 'I can't get it all in there'. I asked her would she let my sister help me and she said yes, but she didn't want her to touch the pen—or the pencil. She said she could stand behind my chair and tell you.

Q. So your sister didn't touch the pen, did she? A. No.

Q. So all of the printing that was done was done by your own hand, wasn't it? A. Yes, sir, sure was.

Q. And the name up here, 'Martha Rollins'—you left out the letter 'o'—on this defendant's exhibit 20, you did that printing also, didn't you? A. I did.

Q. And also you filled in your address, 1017 East Airline didn't you? A. Yes, sir.

Q. And you put down the date, 10-10, is that correct? A. I guess so.

[233] Q. And you wrote the word '64' by your age, did you not? A. Yes, sir.

Q. And that's how old you were at the time? A. Yes, sir.

Q. And you're now 67? A. Yes, sir.

Q. You say it took you about an hour to do that? A. Yes, sir.

Q. But you got it done, didn't you? A. I did the best I could.

Q. After about an hour you say? A. Yes, sir.

Q. And then after you did that, they let you register and vote? A. That's right.

Q. And you voted in the next election didn't you? A. Yes, sir, the one which was coming up.

Q That was in the Johnson-Goldwater election? A. I guess he run. It was the Johnson election, the one that I voted in.

Q. Yes, ma'am. A. I voted the Democrat ticket.

Q. So all you did was mark the circle, didn't you? A. Yes. My sister will tell me which is which, but I voted for who I wanted to.

[234] Q. You made up your own mind about that, didn't you? A. Yes, sir.

Q. You didn't let your sister vote for you? A. No, sir.

Q. You had decided that before you went to vote, didn't you? A. I did.

Q. And did you decide who you wanted to vote for by listening to television and watching them on television and listening to radio about them? A. Well, I seen some of that but I just had it in my mind I wanted Mr. Johnson to go in. And the governor I voted for him.

Q. Governor Moore? A. Yes, sir. Dan Moore.

Q. Right. So you always make up your mind about who you want to vote for yourself? A. Yes, sir.

Q. And if there's somebody on there you don't want to vote for, you just don't vote for them? A. That's right.

Q. You signed your name or printed your name at the time after this lady had you to print this sentence and then you signed your name by printing it on this defendant's exhibit number 19, didn't you, right here? [235] A. Right there, yes, sir.

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[238] DEPOSITION OF
BURT TRYE BEATY

MISS GALLAGHER: May the record show that Burt Trye Beaty was registered on April 28, 1962, in Precinct Number 28 by Registrar Mary Barnett, and that the witness is white.

BY MISS GALLAGHER:

Q. Mr. Beaty, for the record would you state your full name, please? A. My full name?

Q. Yes, sir. A. Burt Trye Beaty.

[239] Q. Where do you live, sir? A. I live at the old home place on Beaty Road.

Q. Is that in Gaston County? A. Yes, it is.

Q. How long have you been living there, sir? A. Well, it'll soon be 67 years. Monday it'll be 67 years.

Q. Is that all your life? A. All my life.

Q. Do you own that place, sir? A. Yes, ma'am.

Q. Are you registered to vote in Gaston County? A. Yes, ma'am.

Q. How long have you been registered to vote in Gaston County? A. I believe it was 1932.

Q. When you were a young man or a little boy did you have a chance to go to school much? A. Not much.

Q. How much did you get to go to school? A. I imagine I averaged two months out of the year.

Q. For how many years? A. Well, I don't know. It must have been seven or eight years.

Q. Seven or eight years. Did you learn how to read and [240] write, sir? A. No, I didn't.

Q. You didn't learn how to read and write? A. No, I didn't learn much about reading and much about writing.

Q. You can sign your name though? A. Yeah, I can sign my name.

Q. Can you recognize your name when you see it, when you have written it? A. Oh, yeah.

Q. Besides writing and recognizing your name, can you read and write other things? A. No. I wouldn't say I could.

Q. I'm going to show you a piece of paper, Mr. Beaty, and I'm going to ask you—down in the corner, is that your name where you have written it? A. Yes, ma'am.

MISS GALLAGHER: All right. I would like to introduce this as defendant's exhibit number 21, please.

Q. (By Miss Gallagher) Do you remember the first time that you registered to vote? A. No, I just don't remember when it was. It was in 1932 I think. When Roosevelt was first elected, that was the first time. Wasn't that 1932?

MR. STOTT: I think so. That's close enough.

[241] Q. (By Miss Gallagher) I really don't know. Do you remember whether the person who registered you the first time asked whether you could read and write or not? A. I think he did. I'm not sure but I think he did.

Q. And what did you say? A. I just told him the truth, that I couldn't.

Q. But you could—but you got registered anyway? A. I got registered anyhow.

Q. I would like to ask you about the time that you registered just a few years ago. Do you remember registering just a few years ago? A. Yeah, I remember registering the second time. I believe they said something happened to the books. I ain't right sure though. I had to re-register.

Q. Right. Now, when you registered that time, did the registrar ask you whether you could read and write? A. I think he did.

Q. And what did you tell him? A. I told him the—I told them the same thing. I didn't have much education. I couldn't do much.

Q. Did the registrar ask you to sign your name on the registration card? A. I believe she did. I ain't right sure but I believe she did. [242] Q. Did you registrar ask you to do anything else besides that? A. I don't think she did.

Q. Have you been a good citizen in the whole time you've lived in Gaston County? A. I don't know but I believe the record shows I've been a pretty good citizen.

Q. You've paid your taxes regularly? A. Ma'am?

Q. Have you paid your taxes regularly? A. I think so.

MR. STOTT: The plaintiff will stipulate that he's been a good citizen.

MISS GALLAGHER: All right.

A. You can look on the record and see if I have ever missed. They're getting so high though I can't hardly pay them.

Q. (By Miss Gallagher) Do you vote, Mr. Beaty? A. I vote. I vote a straight ticket every time.

Q. I see. When you go to vote, does somebody go and help you? A. Well, the first time or two they did, but most of the times it comes out in the paper who you want to vote for and the paper shows you where you want to vote to vote a straight ticket or vote for different [243] ones, but I just always vote a straight ticket. Ain't much to it.

Q. You know how to vote a straight ticket without anybody helping you now? A. Yes, ma'am.

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BY MR. STOTT:

Q. Do you read the newspapers, Mr. Beaty? A. No.

Q. Do you own the place that you live, the old home place? A. Yeah.

Q. How long have you owned it? A. Well, I have to study a little bit.

Q. Just give me your best estimate about how long it's been. A. I imagine pretty close to thirty-five or forty years.

Q. Did you farm on this property? A. I've farmed all my life.

Q. You're now retired, are you, or do you still farm? A. I still farm. I can't do much.

Q. Do you have some children? A. Yes.

Q. How many? A. I had five.

[244] Q. Did they all go to school—finish high school? A. All but one. I've got one teaching down at Robinson School now.

Q. Where? A. Robinson School.

Q. Out there on Union Road? A. Yes, sir.

Q. Did any others go to college? A. No, sir.

Q. You can sign your name? A. Oh, yes.

Q. Where did you learn to write your name? A. Well, I learnt that when I was a kid going to school. I had to sign so many different things, a fellow—if he couldn't sign his name, he would soon learn it.

Q. You sign checks and that sort of thing? A. Well, if I signed a check, I would have to get somebody else to write it out and I would sign it.

Q. You would sign it? A. Sign my name.

Q. Yes, sir. When you were paying for that girl going to college, you signed those checks, didn't you? A. I had to.

Q. Where do you vote? A. Huh?

[245] Where do you vote, at Union? A. Union

Q. You have always been permitted and allowed to vote in Gaston County, haven't you? A. Ever since I've registered.

Q. And every time you wanted to vote you've been allowed to vote? A. That's right.

Q. Nobody has ever told you you couldn't vote when you went to the polls, have they? A. I haven't had nobody to turn me away.

Q. And you don't have to have any help when you go into the voting booth, do you? A. No. The first time I went to vote I called on some help. I didn't know too much about it, you know.

Q. Was that back in 1932? A. 1932. Bill Barnes—I don't know whether you knowed him or not—he helped me get started out.

Q. When you go there to vote, you know who you want to vote for and how you're going to vote, don't you? A. Yes, sir.

Q. And nobody tells you how to vote, do they? A. Never have.

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[248] DEPOSITION OF
MARY PELEY BENOY

MISS GALLAGHER: May the record show that Mary Peley Benoy was registered on April 28, 1962, in Precinct Number 12, by Registrar Flora M. Keever, and that this witness is a white female.

BY MISS GALLAGHER:

Q. Mrs. Benoy, for the record would you state your full name, please? A. Mary Peley Benoy.

Q. Where do you live, Mrs. Benoy? A. I live out at 1840 Auten Road, East Gastonia.

[249] Q. How long have you been living there, ma'am? A. Nearly 22 years.

Q Do you own that house? A. I own my own home.

Q. Are you registered to vote in Gaston County, Mrs. Benoy? A. Yes.

Q. How long have you been registered to vote here? A. Let's see. Well, I don't just remember. About twenty some years, I guess.

Q. When you were a little girl, Mrs. Benoy, did you have a chance to go to school much? A. No. I didn't have any chance to go because we lived out in the country and it was so far until we couldn't walk and get to school, me and my oldest brother.

Q. I see. Did you learn how to read and write at all? A. I can read a few words and I print my name. That's about all I can do. I've told you the truth and that's all I can do.

Q. That's just what we want to—you to do. A. That's all I can do.

Q. The first time you registered to vote in this county, about twenty years ago you say, do you remember whether the registrar asked you whether you [250] could read and write? A. No, because I think my husband put my name down and his together. We registered and I think he put my name down then.

Q. You think your husband put your name down? A. Yes.

Q. Let me ask you this—did you register just recently, within the last five years, when they made the new books? A. Yes.

Q. You went back and registered? A. Yes. I went to the East Gastonia Schoolhouse and registered.

Q. Okay. At that time did the registrar ask you whether you could read and write? A. Yes, and I told her just exactly what I've told you all.

Q. Did the registrar ask you to show her that you could read a little bit? A. Yeah. I knowed a few of the letters and I registered. She told me I could register.

Q. And did you sign your name on the registration card? A. Yes, ma'am, I did. I printed it.

Q. I'm going to show you a piece of paper, Mrs. Benoy, and I'm going to ask you whether this is the way you [251] printed your name on the registration card? A. That is the way. That is the way I print my name.

Q. Okay. That's your signature? A. Yes, ma'am, it is. That's my signature. I have to sign my name on all my important papers and things.

MISS GALLAGHER: I would like to introduce this as defendant's exhibit number 22, please.

Q. (By Miss Gallagher) Now, I'm going to show you a piece of paper, Mrs. Benoy, defendant's exhibit two, and I'm going to ask you to tell me what words here you can read? A. Well, I know those letters here.

Q. You just read to me as much as you can. Take all the time you need. A. Well, I would have to go kind of slow. E-v-e-r-y, P-e-r-s-o-n.

Q. That's very good. Do you know what those words are, those first two that you read? A. I can't word it together too good. I'll tell you that now.

Q. Are there some words on there that you can recognize, ones where you can say the whole word? A. Well, I guess there a few, not too many. That's the truth.

Q. Tell me which ones they are. [252] A. I don't believe I can word them. I know I couldn't. But I do know the letters.

Q. Okay. That's just fine. Since you have registered, Mrs. Benoy –since you have registered to vote, have you voted? A. Yes, I voted.

Q. You vote every big election that there is? A. Yes, I vote for the presidents.

Q. When you go to vote, does somebody go with you? A. I have my sons to go with me and see I vote right for what I stand for.

Q. Right. Now, does one of your sons go into the booth with you? A. Yes, ma'am, they do.

Q. And do you tell him who you want to [vote] for? A. He knows who I want to vote for because they're the same thing I am.

Q. I see. Mrs. Benoy, since you've been living in Gaston County have you been a good citizen. A. I try to be. That's the best I can do. I try to be.

Q. You pay your taxes? A. I certainly do.

Q. You take an interest in government enough to register and vote? A. Yes.

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[253] BY MR. STOTT:

Q. Mrs. Benoy, did you go to school any at all? A. No, I never did get to go to school any. When I got big enough to go to work, I had to go to work.

Q. How old were you when you started to work? A. I 'spect I wasn't more than about 12 or 13 years old.

Q. You and your oldest brother never got to go to school? A. That's right.

Q. Did some of your younger brothers and sisters get to go? A. Yes.

Q. How many were in your family? A. Five boys and two girls.

Q. Where were you born and raised? A. In Williamsburg County.

Q. In South Carolina? A. Yes.

Q. Do you read the newspaper? A. No, I don't read the newspaper.

Q. You watch television, do you? A. Yes, I watch the news.

Q. Is that the way you decide how you want to vote, by watching them on television and listening to them on radio? [254] A. I vote like my husband did. My husband was a Republican. He voted the Republican ticket and I do, too.

Q. You vote a straight ticket, do you? A. A straight ticket is what I do.

Q. Yes, ma'am. Do you consider yourself to be an intelligent person sufficient to make up your mind about who you want to vote for? A. Sure.

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DEPOSITION OF

[257] WILLIAM DEWITT MARTIN

MISS GALLAGHER: May the record show that William Dewitt Martin was registered on May 5th, 1962, in Precinct

Number 11 by Registrar Elizabeth Thomas Kinlaw, and that the witness is white.

BY MISS GALLAGHER:

Q. Mr. Martin, for the record would you tell us your full name, please? A. William Dewitt Martin.

Q. How old are you, sir? A. I'm—I was 63 last September.

[258] Q. Where do you live? A. Down here on Stevens Street.

Q. I'm sorry. I didn't hear you. A. Stevens Street.

Q. Is that in Gastonia? A. Yes, ma'am.

Q. How long have you been living there? A. About 31 years.

Q. Are you registered to vote in Gaston County, sir? A. Yes, ma'am.

Q. How long have you been registered? A. I've been registered—I registered at that last place about '62.

Q. I'm going to have to ask you to talk louder so that the reporter will understand everything you say. A. About '62.

Q. That was the last time you registered? A. Yeah.

Q. Where was that? A. At the Armstrong School.

Q. When you were a little boy, sir, did you have a chance to go to school much? A. Not too much.

Q. I see. How much did you go to school? A. I went to the second.

[259] Q. To the second grade? A. Yes, ma'am.

Q. Did you learn how to read and write when you were in school? A. No, ma'am.

Q. Can you write your name, sir? A. I can write a little bit at it, not too good.

Q. I see. Besides signing your name, can you read or write anything else? A. No, ma'am.

Q. Now, let me ask you about this time that you went down to the school to register. Did the registrar ask you then whether you could read and write or not? A. As well as I can remember they did. Now, I might have told them that I couldn't whenever I went in but, anyway, they found out I couldn't.

Q. They found out you couldn't. A. Yeah.

Q. What happened then? A. They read me a piece of paper, or something off of it.

Q. And did you have to repeat something after the registrar? A. No, not as I remember I didn't. I sure didn't.

Q. Do you remember having to do anything at all yourself when you went to register? [260] A. No, ma'am.

Q. Do you remember signing your name at that time? A. No.

Q. Now, do you remember the first time that you registered in Gaston County? A. In Gaston County? No, I can't remember that. See, I stayed over here in the Crowder Mountain Township for years and I done my first voting, I think, over there.

Q. Was that when you were a young man? A. Yes, ma'am.

Q. Have you been voting regularly ever since? A. No, ma'am.

Q. Do you vote sometimes? A. Not for the last–

Q. You didn't vote in the last election? A. No, ma'am.

Q. But you did vote before that sometimes? A. Oh, yes.

Q. Is that right? A. Yes.

Q. When you went to vote, did someone help you? A. Yes, ma'am.

Q. Did you tell someone who you wanted to vote for and they showed you how to do it, is that right? [261] A. No. They would always send somebody in there with me, you see, and call over the names and I would do the marking.

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BY MR. STOTT:

Q. Do you own your home down there, Mr. Martin? A. Yes, sir.

Q. Where do you work now? A. I work at the Dunn Mill.

Q. Dunn Mill? A. Dunn Mill, yes, sir.

Q. How long have you worked for Dunn? A. About 17 years I guess.

Q. Any time that you wanted to vote, you went to vote, is that right? A. Oh, yes.

Q. You've never been denied the right to vote when you wanted to vote, have you? A. No, sir.

Q. And you say you can write your name? A. I can do a little bit at it. I ain't too good at it.

Q. When you went to register in 1962, when we had the new registration here in Gaston County, did you tell the registrar that you couldn't see too good? [262] A. No.

Q. Can you see all right? A. Oh, yes. I can do fairly tolerable at it. I bought some glasses. I use them at close quarters.

Q. Do you read the newspaper? A. No, but I can look at the funny paper.

Q. You just look at them, you can't read them? A. That's right.

Q. You make your own mind up about who you want to vote for, is that right? A. Yes, sir. I've always made up my own mind, ever since my daddy has been gone.

Q Yes, sir. You consider yourself to be intelligent enough to decide who you want to vote for and that sort of thing, don't you? A. Sure, yes, sir.

Q. Do you sign your own payroll check when you get it? A. Yeah, I do that.

Q. Yes, sir. And you know how much that check is for when you get it? A. Yes, sir.

Q. And if you go to the store to buy an article that costs $7.50 and you give them a ten-dollar bill, you know how much change you're supposed to get, don't you? [263] A. Yes, sir. I'm pretty good at counting money.

MR. STOTT: All right.

A. Whenever I get ahold of it.

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MISS GALLAGHER: We offer that into evidence as defendant's exhibit number 23.

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DEPOSITION OF
[266] OLIN ELMER HAMBRICK

MISS GALLAGHER: May the record show that Olin Elmer Hambrick was registered on May 10th, 1962, by Registrar Baker. The precinct is not shown.

MR. STOTT: Carl Baker. He was the one yesterday. It's the Victory School box.

MISS GALLAGHER: Precinct Number 2. And that the witness is white.

BY MISS GALLAGHER:

Q. Mr. Hambrick, for the record would you state your full name, please? [267] A. Olin Elmer Hambrick.

Q. Where do you live, sir? A. 130 Hilltop Drive.

Q. Is that in Gastonia? A. Yes, ma'am.

Q. How old are you, sir? A. 48 year old.

Q. Are you registered to vote in Gaston County? A. Yeah, at the Victory School.

Q. How long have you been registered to vote here? A. '62 I reckon. When President Kennedy run.

Q. Was that the first time you registered? A. Yes, ma'am.

Q. Let me ask you this, sir—when you were a little boy did you get a chance to go to school much? A. No, I didn't.

Q. How far did you go through school? A. The second grade.

Q Did you learn how to read and write? A. What time I got to go to school I did. I didn't go to school much.

Q. Did you learn how to write your name? A. Yeah.

Q. And can you recognize your name when you see it, when you have signed it? [268] A. Yeah.

Q. Besides reading and writing your name, how much else can you read? A. I can read some things and spell it. It takes me a right smart bit to figure out what it is.

Q. When you answer my questions, would you talk slowly so Mr. Nixon can get it all down, please. When you went to register in 1962, did the registrar ask you whether

you could read and write? A. Yeah, he asked me could I read and write. I told him some things I could and some things I couldn't.

Q. Did the registrar give you something to read? A. Yeah, he give me a piece of paper with a little thing on there to read.

Q. And then what happened? A. My wife, she read it and I read it behind my wife.

Q. I see. Did you sign your name to the registration form? A. Yes, ma'am.

Q. I'm going to show you a piece of paper, Mr. Hambrick, and ask you if that's where you signed your name? A. Yeah.

Q. That's your signature? A. Yeah.

MISS GALLAGHER: I would like to introduce this as [269] defendant's exhibit number 24, please.

Q. (By Miss Gallagher) After you registered, did you vote, Mr. Hambrick? A. Yeah, I voted twice in my life. That's the only times I ever voted.

Q. When you went to vote, did somebody go with you to help you? A. Me and my wife went together and voted.

Q. I see. Did your wife go into the booth with you? A. Yes, ma'am.

Q. Did you tell her who you wanted to vote for and show—and she showed you where— A. Yeah. She showed me where to mark, you know.

Q. And you marked the ballot? A. Yeah.

Q. Could you have recognized the names if your wife hadn't been there? A. Yeah, I knowed which way I wanted to vote, Republican or Democrat. That's all I wanted.

Q. But your wife went with you? A. Yeah. She went to vote, too.

Q. I'm going to show you a piece of paper, Mr. Hambrick, this defendant's exhibit two, and I would like you to tell me on this top line how many words you can read. A. I can't read none of them. I can spell some of them.

[270] Q. You go ahead and take all the time you need and you tell me what you can read in that sentence. A. E-w-o-n-y-p.

Q. You can read some of the letters real well. Are there any whole words which you can recognize? A. Just like I said, I can't put them altogether.

Q. I see. Is that what you did when you went to register; or did they ask you to do anything at all? A. They give me a piece of paper, and I put my hand on the Bible and my wife read it and I read it behind her.

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BY MR. STOTT:

Q. Olin, when you went to vote, you knew who you wanted to vote for, didn't you? A. Yes, sir.

Q. You made up your own mind about that? A. That's right.

Q. When you decided you wanted to register and go vote nobody denied you that right in this county, did they? A. No.

Q. And you say when you went into the booth to vote, your wife went in there with you? A. Yes, sir.

Q. And she didn't tell you how to vote? [271] A. No.

Q. You would just tell her how to vote? A She voted for Democrats or Republicans one.

Q. Yes. And you consider yourself intelligent enough to know who you want to vote for? A. Sure.

Q. And you consider yourself intelligent enough to make up your mind about who you want to vote for, don't you? A. That's right.

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DEPOSITION OF

[274] WILLIAM ANDERSON TONEY

MISS GALLAGHER: May the record show that William Anderson Toney was registered on October the 5th, 1962, in Precinct Number 18 by Registrar Dorcas Kelly and that the witness is white.

BY MISS GALLAGHER:

Q Mr. Toney, for the record would you state your full name, please? A. William Anderson Toney.

Q. Where do you live, sir? A. Route 1, Kings Mountain.

[275] Q. Is that in Gaston County? A. That's right.

Q. How old are you, sir? A. 41.

Q. Have you been living in Gaston County all your life? A. No, not all my life.

Q. How long have you been living in Gaston County? A. About 39 year.

Q. I see. Are you registered to vote in Gaston County? A. Yes, ma'am.

Q. How long have you been registered to vote? A. I just registered one time and voted one time.

Q. When you were a little boy, did you get a chance to go to school much? A. No, I didn't.

Q. How much did you go to school? A. Altogether about three year.

Q. About three years? A. Yeah.

Q Did you learn how to read and write? A. I knew when I quit but I quit practicing and I can't read or write any but my name now.

Q. You can write your name and you recognize it when you see it? A. That's right. I can't write 'Anderson' good. I just always [276] sign it 'William A.'

Q. I see. I'm going to show you a piece of paper, Mr. Toney, and I'm going to ask you if that would be the way you signed your name?

Q Is that your signature? A. (Witness nods.)

MISS GALLAGHER: I would like to introduce this as defendant's exhibit number 25, please.

Q. (By Miss Gallagher) Now, when you went to register, did the registrar ask you whether you could read and write? A. No, he didn't.

Q Did he give you anything to read? A. No.

Q. But he had you sign your name? A. That's right.

Q. Besides signing your name, did he have you do anything else at all? A. No, nothing at all.

Q. I see. At the time that you registered—I think the record shows that was in 1962—could you read then? A. No.

Q. You said you voted one time. When was that? A. I don't remember what year. They voted Kennedy in.

[277] Q. I see. When you went to vote, did somebody go with you? A. Yeah, my wife went with me.

Q. Your wife got a pretty good education? A. Yeah, sixth grade.

Q. She can read and write? A. That's right.

Q. Did she help you by showing you what the different candidate's names were? A. That's right.

Q. You told her who you wanted to vote for? A. And she showed me where to check it.

Q. I see. Have you been a good citizen while you've been here in Gaston County? A. I think so.

Q. You've never been in any trouble? A. No, ma'am.

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BY MR. STOTT:

Q. You say you went through the third grade, Mr. Toney? A. That's right.

Q. And you did learn to read when you were in school? A. I could read pretty good, printed stuff.

Q. But you were able to read the things they gave you through the third grade? [278] A. That's right.

Q. And you can read some now, can't you? A. No, just a few little old things.

Q. Do you read the newspaper? A. No, I can't read a thing in it.

Q. Do you read the sports page? A. No.

Q. You don't read the funny papers? A. I can't even read it.

Q. Sir? A. I can't even read it.

Q. Where do you work now? A. Textiles, at the Myrtle plant.

Q. When you get paid, how do you get your check cashed? A. I take it down to the bank and sign it.

Q. You sign your name, don't you? A. That's right.

Q. You know how much the check is for when you get it, don't you? A. That's right.

Q. When you have it cashed, you know how much money you're supposed to get? You count it and make sure you get the right amount? A. I'm pretty good with figures.

Q. Yes, sir. And when you go the—when you go to the polls [279] to vote, you know who you want to vote for, don't you? A. That's right.

Q. Nobody tells you how to vote, do they? A. Nobody tells me.

Q And after you registered, nobody has denied you the right to vote in this county, have they? A. No.

Q. Any time you have wanted to vote, you've been able to vote? A. That's right.

Q. And you make up your mind about who you want to vote for by listening to them on television and radio and watching them and that sort of thing? A. That's right.

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DEPOSITION OF

[282] VESTER JOE SWINK

MISS GALLAGHER: May the record show that Vester Joe Swink was registered on May 12, 1962, in Precinct Number 11 by Registrar Elizabeth Thomas Kinlaw, and that the witness is white.

BY MISS GALLAGHER:

Q. Mr. Swink, for the record would you state your full name, please? A. Vester Joe Swink.

Q. Where do you live, sir? A. 1224 Wagner Circle. I've had my teeth pulled and can't [283] talk.

Q. I'm sorry. Is that in Gastonia? A. Yeah.

Q. How old are you, sir? A. I'll be 60 in December.

Q. How long have you been living in Gaston County? A. Since 1916.

Q. 1960 or 1916? A. 1916.

Q. Are you registered to vote in Gaston County? A. Yeah.

Q. How long have you been registered? A. Well, I've been registered ever since Roosevelt run. That's the first time I was old enough to vote.

Q I see. When you were a little boy, did you get a chance to go to school much? A. No. I finished about two months in the third grade.

Q. I see. And did you learn how to read and write? A. I can read a little but I can't see on account of my eyes. I had my eyes worked on and had to get glasses. I can read a little bit and I can write a little. I can write my name.

Q. Can you recognize your name when you have written it when you see it? A. Yeah. I have to sign my check, you know, and everything.

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[285] A. No. It was two women. They asked me all kinds of questions.

Q. Did they ask you whether you could read and write? A. I told her I could read a little and I could write my name. I can't write it good but I can write it enough.

Q. I'm going to show you a piece of paper and ask you if that is the way you write your name right there? A. Yeah.

Q. That is your signature on the form there? A. Yeah.

MISS GALLAGHER: Okay. I would like to introduce this as defendant's exhibit 26, please. A. Yeah, that's my handwriting.

Q. (By Miss Gallagher) You recognize that? A. Yeah. I don't reckon nobody else writes that way.

Q. Since you registered, have you voted, Mr. Swink? A. Yeah, I voted in the presidential election, this last one.

Q. When Mr. Johnson and Mr. Goldwater were running? A Yeah.

Q. When you voted, did somebody go with you? A. No, I went by myself.

Q. You went yourself. What kind of work do you do? [286] A. Textiles.

Q. How long have you been doing that kind of work? A. Ever since 1921, I think is when I went to work.

Q. You have been working regularly all that time? A. All that time.

Q. You pay your taxes regularly? A. Yeah.

Q. You consider yourself a good citizen? A. Yeah. I ain't got nothing against me I reckon.

Q. You served on a jury. Is that what you said? A. Yeah, I've been on the jury. I ain't been arrested in my life and I hope I never will be. I give my kids, though, all a good education. Three of them went through the eleventh grade and got one in the ninth grade, but I didn't get any schooling.

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BY MR. STOTT:

Q. Are you related to Junior Swink? A. Yeah, that's my brother.

Q. You say you went about two months in the third grade, Mr. Swink? A. Yes, sir.

Q. Where were you born? A. Catawba County.

Q. Where in Catawba County? [287] A. Catawba County is all I know.

Q. Somewhere around Newton? A. No, back out between Shelby and Morganton, about a mile off the highway.

Q. When you go vote, you know who you want to vote for, don't you? A. Yeah.

Q. You make you your own mind about who you want to vote for? A. Yeah, I make up my own mind. Ain't nobody ever told me nothing.

Q. You have never been denied the right to vote in Gaston County, have you? A. Never have.

Q. Right now you consider yourself intelligent enough to make up your mind about who to vote for, don't you? A. Yeah. I can make up my mind.

Q. Have you voted in city elections as well as in the presidential elections? A. Yeah. I vote in most all of them. The last one I didn't vote in but—

Q. You didn't vote in the last city election? A. No.

Q. But you did vote in that Johnson-Goldwater election? A. Yeah. I vote in all the presidential elections.

[288] Q. When you get paid at the mill, you sign your own check, don't you? A. Yeah.

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DEPOSITION OF
[291] ARVEL LEE RAYFIELD

MISS GALLAGHER: It is stipulated that the registration statistics concerning Mr. Rayfield will be attached to this deposition at a later time. Do you know what precinct you're registered in? A. No, ma'am, I sure don't.

MISS GALLAGHER: That's all right. Let the record show that the witness is white.

BY MISS GALLAGHER:

Q. Mr. Rayfield, for the record would you tell us your full name, please? [292] A. Arvel Lee Rayfield.

MR. STOTT: How do you spell your first name, do you know? A. No, I don't.

Q. (By Miss Gallagher) Where do you live, sir? A. In Gaston County, five miles this side of Cherryville.

Q. How long have you been living there? A. 56 years.

Q. Is that all your life? A. All my life.

Q. Are you registered to vote in Gaston County? A. Yes, ma'am.

Q. How long have you been registered to vote here? A. Well, ever since I was about 21 years old.

Q. I see. When you were a little boy, did you have a chance to go to school much? A. No, ma'am.

Q. How much did you get to go to school? A. I went to the fourth grade but I didn't know that.

Q. Did you learn how to read and write? A. No, ma'am.

Q. Can you write your name? A. Yes, ma'am, I can write my name.

Q. Can you recognize your own signature when you see it? A. Yes, ma'am.

[293] Q. Besides reading and recognizing your name, can you read anything else? A. I can read signs on the road.

Q. Like the signs that say stop? A. Yes, ma'am.

Q. I see. What about the newspaper? Do you read the newspaper? A. No, ma'am.

Q Do you read the sports page? A. No, ma'am.

Q. All right. When you first registered to vote, when you were a young man, did the registrar ask you whether you could read and write? A. No, ma'am.

Q. He didn't ask you to show that you could do that? A. No, ma'am.

Q. Do you remember re-registering a few years ago when they made the new books? A. Yes, ma'am.

Q. Where did you register then? A. Lander's Chapel.

Q. Did the registrar ask you at that time whether you could read and write? A. Yes, ma'am.

Q. And what did you say? [294] A. I told him I could write my name.

Q. I see. And did the registrar ask you to read anything? A. No, ma'am.

Q But the registrar had you sign your name? A. I signed my own name.

Q. Have you voted since you registered the last time? A. Yes, ma'am.

Q. When you go to vote, does somebody go with you to help you? A. Yes, ma'am.

Q. Who is that? A. Well, just some of my neighbors around.

Q. I see. A. They read it off to me.

Q. And you tell them who you want to vote for? A. Yes, ma'am.

* * * * *

BY MR. STOTT:

Q. Mr. Rayfield, you have never been denied the right to vote in Gaston County, have you? A. No, sir.

Q. Any time that you went to the polls to vote, they would let you vote? A. Yes, sir.

Q. And when you went to vote, you voted for whomever you wanted to, didn't you? A. Yes, sir.

Q. You made up your own mind about it? A. Right.

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DEPOSITION OF
[298] JUNIE CANIPE RUDISILL

MISS GALLAGHER: May the record show that Junie Rudisill was registered on October 10th, 1964, in Precinct Number 32 by Registrar Floyd L. Mauney, and that the witness is white.

(Discussion off record.)

MR. STOTT: Defendant's exhibit number 27 in the last deposition will be furnished for the record.

BY MISS GALLAGHER:

Q. For the record, Mrs. Rudisill, will you state your full name, please? [299] A. Junie Canipe Rudisill.

MR. STOTT: What is your last name? A. Rudisill.

Q. (By Miss Gallagher) I'm going to ask you to talk up as loud as you can so Mr. Nixon can write down everything that you say. Were do you live, Mrs. Rudisill? A. Cherryville.

Q. Is that in Gaston County? A. Yes.

Q. How long have you lived there? A. Ever since I was about eight years old.

Q. I see. When you were a little girl, did you have a chance to go to school much? A. No.

Q. Did you get to go to school at all? A. A little.

Q. About how much? A. Oh, I don't know. I didn't go too much. My mother was sick and I would go a little bit at a time, what little I could get, and then I went to work wher I was about ten years old.

Q. I see. Where did you go to work? A. Well, the sardine mill in Cherryville. They eat so many when it was built that was the reason they named it that.

[300] Q. Have you been working since that time? A. I have off and on all the time. I've had two children. I'm tired out now. I retired.

Q. How long ago did you retire? A. Last September.

Q. Up until that time where had you been working? A. Carlton Mill.

Q. How long had you worked at the Carlton Mill? A. 26 years.

Q. I asked you whether you learned how to read and write, didn't I? A. Yes.

Q. What did you answer? A. I told you a little.

Q. You can write your name, can't you? A. Yes.

Q. Can you recognize your name when you see it? A. Oh, yes.

Q. Your signature. Can you read a little bit besides that? A. Yes. Not big words.

Q. Okay. I'm going to show you a piece of paper and I'm going to ask you if this is your signature down at the bottom? A. Yes.

[301] Q. Right there? A. No.

Q. Is that your signature right there? A. Oh—is this a 'J'? Yes, that's my name there but that don't look like no 'J'.

Q. Did you write that or not? A. No, I didn't write it.

Q. Do you think you might have written this last part? A. No.

Q. You don't think you wrote any of that? A. No.

Q. I see. A. I didn't see this piece of paper.

Q. This is a photograph of the registration certificate that's in the Gaston County Board of Elections. A. Oh, from the—I guess it is. Yes, I guess I made that 'J' like that. Yes, I know it is now.

Q. It is your signature? A. Yes.

Q. Okay. A. Because I printed it. I wrote this.

Q. Okay. Good.

MISS GALLAGHER: I would like that introduced as defendant's exhibit 28.

Q. (By Miss Gallagher) You're registered to vote, is that [302] right, in this county? A. Yes.

Q. How long have you been registered? A. Well, I registered when I was twenty years old and I'm sixty-two now. I was the 14th of March.

Q. You registered when you were just a young woman. Was that in Cherryville? A. Yes.

Q. When you first registered, did anybody ask you whether you could read and write? A. No. We registered

at the bank then and they didn't ask you anything. But I wrote my name.

Q. I see. Do you remember re-registering about five years ago when they made the new books? A. Oh, yes.

Q. Where did you register that time? A. Well, back over at the schoolhouse with Mr. Mauney.

Q. Would that have been the time that you signed that paper? A. That would have been the time. I remember it now because I printed it.

Q. I see. Did Mr. Mauney ask you whether you could read and write? A. Yes.

Q. And what did you say?[303] A. I told him a little, just like I told you.

Q. I see. And did Mr. Mauney give you a piece of paper to fill out? A. Yes.

Q. I'm going to show you a piece of paper and ask you if this is a photograph of the piece of paper that Mr. Mauney gave you to fill out? A. Yes. I know I signed that.

Q. That's your signature up at the top of the page? A. Yes, that's it.

Q. These three sentences that are written out, are those in your handwriting? A. No. My husband wrote that.

Q. Your husband wrote that? A. Yes.

Q. I see. A. But I signed them all. I signed it.

Q. Did Mr. Mauney say that your husband could write that? A. Yes.

Q. Okay. Since you registered up there, have you voted? A. Yes, I voted.

Q. When you go to vote, does your husband go with you? A. Yes.

Q. Does he help you a little bit? A. Well, I usually know.

[304] Q. You know who you want to vote for? A. Yes. I get it myself.

Q. I was asking whether your husband or somebody showed you when you told them who you wanted to vote for—showed you who was who on the ballot. A. Well, he has told me but I usually find it, you know.

Q. I see. A. I can read a little bit but not much.

Q. I see.

* * * * *

BY MR. STOTT:

Q. Mrs. Rudisill, how far did you go in school? A. Well, about the fourth grade, I think.

Q. Did you learn to write your name while you were attending school? A. Yes, sir.

Q. And you learned to read some, did you, Mrs. Rudisill? A. Yes.

Q. Do you read the paper any now? A. Yes, sir, some.

Q. And you can read it and understand what you are reading? A. Yes, what I read of it I can understand it. I go back over it until I can understand it.

Q. I show you this piece of paperwriting, which is [305] defendant's exhibit 29, and ask you to tell me—or to read this sentence that I'm pointing to now. Can you read that, the typed part there, any of that. If you can, read it for me, please. A. I might have to spell a few words to pronounce them.

Q. All right. Starting right here. A. Is that a—

Q. You'll have to say. A. It says—

Q. Starting right here, if you can, just tell me what words you can read on that paper. A. Well, 'Clark'. Now—

Q. Just say it the way that you would read it, whatever you think the word is. A. I don't know. I just call it 'Clark'.

Q. Just read whatever word you can on there. A. Of. The. Shall. Hold. Office. For.

Q. Do you know what that is? A. Years. That's not so good, is it?

Q. Could you copy this sentence here the same way it appears in typing on this defendant's exhibit 29? Could you write that out if you had to? A. Yes. I would have to see it, though.

Q. If you were looking at it, could you copy this without any trouble? [306] A. I can copy most any word if I see it.

Q. Could you copy the words that appear on this defendant's exhibit number 29, the words 'Clerks of the Superior Courts shall hold their offices for four years'? Could you copy that without any trouble? A. Not unless I would look at it.

Q. If you were looking at it? A. Yes.

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MISS GALLAGHER: Let me present this piece of paper as defendant's exhibit 29.

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DEPOSITION OF
[309] ROBERT RUSSELL DAVIS

MISS GALLAGHER: May the record show that Robert Russell Davis was registered on October 12, 1964, in Precinct Number 44 by Registrar Allie M. Rhyne, and that the witness is white.

BY MISS GALLAGHER:

Q. Mr. Davis, for the record would you state your name, please? A. Robert Russell Davis.

Q. Where do you live, sir? A. Stanley.

[310] Q. Is that in Gaston County? A. Yes, ma'am.

Q. How long have you been living in Gaston County? A. Oh, 52 years.

Q. Is that all your life? A. That's all my life.

Q. When you were a little boy, did you get a chance to go to school much? A. No, ma'am, I didn't. My mother was pretty sick all her life and I had to stay there and work on the farm.

Q. Did you get to go to school at all? A. I went through the third grade.

Q. Did you learn how to read and write? A. No, ma'am.

Q. Did you learn how to sign your name? A. I can bearly write it and that's all.

Q. Can you recognize your signature when you see it? A. Yes, ma'am.

Q. Besides reading and recognizing your signature, can you read and write anything else? A. Oh, no.

Q. Are you registered to vote in Gaston County? A. Well, it's been a good while ago. Mr. Fred Rhyne registered me. His wife had the books. I stopped up there to ask them about registering to vote and Mrs. [311] Rhyne wouldn't let me register because I didn't read nor write. Mr. Fred said he would take it on hisself. She didn't want him to do it. He took it on hisself and filled the papers out for me. Well, I was living in Belmont. Mr. Robert Stowe, who owns the mill down there—you probably know him—wanted me to vote for him. I went to Belmont City Hall to register and the lady laid the papers out and I said I couldn't fill them out. She said you can't fill them out, you're not counted a citizen in the United States. Said you don't need to vote. She wouldn't let me register. I said, ma'am, if I can't register, I won't pay no more taxes, and she said we'll guaranishee your time and take the taxes like that. She wouldn't let me register.

Q. You told us about two times when you had experiences with trying to register. One was the time where you said—when you said that about Mr. Rhyne and the other one was in Belmont. Now, which of those things happened first? A. Mr. Fred Rhyne.

Q. That happened first? A. Yes, ma'am.

Q. Okay. I'm going to show you a piece of paper, Mr. Davis, and I'm going to ask you whether this is your [312] signature, the way you write your name, a picture of your signature? A. Yes, ma'am.

Q. That is your signature? A. Yeah.

MISS GALLAGHER: I would like to introduce this as defendant's exhibit number 30.

Q. (By Miss Gallagher) Now, I'm going to show you another piece of paper. Is that your signature at the top? A. Yes, ma'am.

Q. And when you went to register in Stanley, is this a piece of paper that Mr. Fred Rhyne took upon himself to fill out? A. It does look like it but I wouldn't be positive about it.

Q. Is that your handwriting right there? A. No, ma'am.

Q. You didn't write that, did you? A. No, ma'am.

MISS GALLAGHER: I would like to introduce this as defendant's exhibit number 31.

Q. (By Miss Gallagher) When you went up to Stanley to register, you said you told Mrs. Rhyne that you couldn't read and write, is that right? A. That's right.

[313] Q. And what did she say then? A. She said if I couldn't fill out these forms I couldn't register you. Well, Mr. Fred said, 'Well, honey, I'll take it on myself and fill them out for him'. She told him no, he couldn't do that. He told me not to tell nobody.

Q. Mrs. Rhyne knew, though, that her husband had filled out the forms? A. Yes, ma'am.

Q. I see. Since you registered, did you vote? A. I did at that time, yes, ma'am.

Q. When you went to vote, did somebody help you? A. Yes, ma'am. I generally carry my wife with me.

Q. Can she read and write pretty well? A. Yes, ma'am.

Q. Does she go into the booth with you? A. Yes, ma'am.

Q. You told her who you wanted to vote for and she showed you how to do that? A. Yes, ma'am.

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BY MR. STOTT:

Q. You say you went over to vote in Belmont? A. Yes, sir.

Q. Were you living in Belmont? [314] A. Yes, sir.

Q. That was the voting in the Belmont city elections when you say you voted for Robert Stowe? A. Yeah.

Q. That didn't have anything to do with the county elections, did it? A. No, sir.

Q. That was a different registrar from Mr. Rhyne and Mrs. Rhyne, wasn't it? A. That's right, yes, sir.

Q. Anyway, they did let you register? A. No, not in Belmont.

Q. I'm talking about in the county. A. Mr. Fred Rhyne took it on hisself.

Q. You registered, didn't you? A. Yeah, but Mrs. Rhyne—

Q. I know that but you did register, didn't you? A. Yes, sir.

Q. And then after you registered, you voted, didn't you? They didn't deny you your right to vote? A. Well—

Q. You never have been denied the right to vote when you were registered, have you? A. No, but if it hadn't been for Mr. Fred I couldn't have registered.

[315] Q. I'm just asking yo—did you vote when you went to the polls? A. I don't remember, Mr. Stott, it's been so long ago. I think I did. But I know—

Q. I'm just asking you now a simple question. You were registered by Mr. Rhyne? A. That's right.

Q. And then after that you had a right to vote, didn't you? A. That's right.

Q. So you have never been denied the right to vote in Gaston County, have you? A. I would have been if it hadn't been for him taking it on hisself.

Q. Just answer the question. Have you been denied the right to vote in Gaston County? That's all I'm asking you, Mr. Davis. A. No.

Q. That's all I asked you. You have already told me about Mr. Rhyne letting you do that. I'm just asking you simply— A. Here's what I'm getting at—I couldn't have done it if Mr. Rhyne hadn't took it—

Q. You said that about—you've said that about four times. Now, you did vote though, didn't you? [316] A. I don't remember.

Q. But you did have the right to vote if you wanted to? A. I had the right but I don't remember whether I did vote or whether I didn't.

Q. Now, is Fred Rhyne living? A. Yes, sir.

Q. Where does he live? A. Stanley.

Q. Have you talked to him about this? A. No, sir. I don't want to get him in no kind of mess over this.

Q. You say you went through what grade? A. Third grade.

Q. Did you learn to write your name in the third grade? A. I can scratch it and that's all.

Q. You can write it enough so you can read it, can't you? A. I can make it out a little.

Q. Okay. Now, you say you signed your name here where it appears on this paperwriting, which is defendant's exhibit number 31? You did sign that? A. It kind of looks like it.

Q. Well, did you sign it or didn't you? A. I don't remember. Mr.—I don't remember.

Q. Look at it and tell me. A. It looks like it but I wouldn't say for sure. I wouldn't [317] swear to it.

Q. And you lived at Stanley at that time, didn't you? A. Yes, sir. I've been over there about twenty some years.

Q. General delivery was your address? A. That's right.

Q. Can you read any part of this—on this line here? A. No. No.

Q. Could you copy this sentence here without any trouble? A. No, I couldn't.

Q. But you didn't copy that yourself, you say? A. No, I did not.

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[320] DEPOSITION OF ERNEST SIMMONS

BY MR. WOLF: Let the record reflect that Mr. Simmons was registered to vote on May 11, 1962, in Precinct 30 by Kate Mitchem.

BY MR. WOLF:

Q. Mr. Simmons, would you please give us your full name? A. Ernest Simmons. That's my full.

Q. Do you have an address? A. An address?

Q. What is your address? A. Gastonia, Route 2.

[321] Q. Do you live in Gaston County or Gastonia?

A. I live in Gaston County, but I'm just out probably about a mile out of the city limits.

Q. How long have you lived in Gaston County? A. Well, I came back up here in '34.

Q. 1934? A. Yes, sir.

Q. And have you lived in Gaston County since 1934? A. Right down there at Cramerton division at this one

place. It's really Burlington Mills division. They call it Cramerton division but It's really Burlington division.

Q. Mr. Simmons, did you go to school in Gaston County? A. No, sir.

Q. Have you gone to school anywhere? A. What little I went was in Banks County, Georgia.

Q. You went to school in Banks County, Georgia? A. I was born in Banks County, Georgia.

Q. Did you go to school there? A. Yes, sir.

Q. How many years did you go to school? A. I never did get out of the first grade. Just as quick as I got big enough to work my dad put me to work.

Q. You just had one year? [322] A. Well, maybe I went—well, I maybe went two or three days this term and two or three days the next term and two or three the next. Where you go maybe one or two days and maybe you're out a week or three or four weeks, you forget what you done that week.

Q. I see. You haven't been back to school since then, have you? A. No, I never have.

Q. Are you registered to vote in Gaston County? A. Am I registered to vote in Gaston County?

Q. Yes. A. Yes, sir.

Q. Do you remember when you first registered to vote? A. The first time?

Q. Yes. A. No.

Q. You don't recall that? A. No, sir.

Q. Was it recently, within the last five years, or would you say it was twenty years ago? A. You mean the first time or the last time?

Q. Well, let's take the last time first, A. Well, that was when these cards come out. It must have been back in the 50's. I can't recall what year that was. We used to do it on the book and we quit [323] and went on a card. It must have been in the 50's. It ain't been for the last year or two I don't think.

Q. Had you been registered prior to the 50's? Do you remember voting twenty or thirty years ago? A. Well, I voted to get President—may I ask her?

MR. STOTT: No, you can't ask her any questions.

Q. (By Mr. Wolf) Was it Roosevelt? A. I believe it was Roosevelt. Now, I ain't for sure, but it was some president that was wanting to get in. That was the first time I voted.

Q. Just answer to the best of your own knowledge, Mr. Simmons, the best you can recall. A. Well, I don't know. I just can't tell you. I just don't remember. I'll have to put it that way.

Q. All right. Fine. Getting back to the time you last registered, do you say maybe it was four or five years ago, or you're just not quite sure the last time you registered? A. It's got to be back in the 50's somewhere.

Q. In the 50's. Do you recall what occurred when you went to register? Did the registrar ask you some questions? A. She just asked me could I read, and I told her no.

Q. And what did she say then? Did she ask you if you could write? [324] A. I wouldn't know whether she did or not. She just asked me could I read and I told her no. I don't remember whether she asked me whether I could write or not. I don't remember that.

Q. I see. Did she ask you to sign anything? A. Well, now, I don't remember that. I couldn't tell you whether I signed it or didn't sign it. I just couldn't tell you that. I don't remember.

Q. But you did get registered to vote at that time? A. Yes, sir.

Q. And have you voted since then? Have you gone down to vote? A. The last time I voted I believe it was in—

Q. Did you vote in the Johnson-Goldwater election? A. I believe I voted in that. I just vote for the presidents. I don't vote in this here—

Q. You don't vote in the local elections? A. No.

Q. You did vote for the president though in about 1964? A. Yes, sir.

Q. Have you voted since then? A. No.

Q. Can you read and write, in fact? A. No, sir. Brother, I can't read what's on none of that stuff to save my life.

[325] Q. Can you sign your name? A. I can scribble

it up just bearly enough to where you can tell what it is. I'm absolutely ashamed of it when I write it myself. I do scribble it on some checks but I can't set down here and write nothing. I don't know it.

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MR. STOTT: I'll stipulate that this is a photostatic copy of his registration application, the original of which appears in the Gaston County Board of Elections office.

MR. WOLF: That is marked defendant's exhibit number 32. I don't have any further questions.

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[328]

DEPOSITION OF
THORNTON STRINGFELLOW

BY MISS GALLAGHER:

Q. For the record, sir, would you state your full name, please? A. Thornton Stringfellow.

Q. Where do you live, Mr. Stringfellow? A. I live down York Road. 421 Ratchford Road.

Q. Is that in Gastonia? A. Yes, ma'am. That's where y'all was. That's where I met y'all at. That's where I live.

Q. How old are you, sir? [329] A. Well, I was born in 1896, August the 14th.

Q. Where you born here in Gaston County? A. No, ma'am. I was born in Chester County.

Q. How long have you been living here in Gaston County? A. Since 1900.

Q. Since 1900? A. That's right.

Q. What is your race? A. Ma'am?

Q. Are you colored or white? A. I'm supposed to be colored. That's all I see.

Q. All right. Are you registered to vote in Gaston County? A. About five years ago I voted.

Q. You voted about five years ago? A. Yes, ma'am. I voted in a presidential election but I don't know whether I registered before I voted or not. But I did vote down here off York Road down here at the voting stand.

Q. I see. Do you remember about five years ago when there was a re-registration in Gaston County, when they made the new books? A. No, ma'am. I don't know anything about that. But I do know I voted, but I won't swear whether I registered or not. But now if a person can vote—if [330] he have to register before he vote, I guess I must have registered, or it might have been in the same day. I don't know.

Q. Let me ask you this, sir—where are you employed right now? A. Ma'am?

Q. Where are you employed? Where do you work? A. For the South Gastonia School.

Q. Where did you work before that? A. Pinkney Mills. I stayed there 23 years and I lost 21 days.

Q. You were only absent from work 21 days in 23 years, is that right? A. That's right.

Q. Now, do you remember while you were working at the mill that there were people getting registered to vote once, do you remember that? A. I believe I do, but they don't have no one to come to me with nothing about registering. I didn't know where the registering place was at that time. But all I know—I believe it was last September—I found out the difference then. I was working in the cafeteria at the school and they was voting that day. Well, I come upstairs and a man asked me could I read the [321] Constitution, something another like that. I said—I told him no, I couldn't read at all, and he said, 'Well, you can't vote', and then that's when I left. That was last September, I believe. I think it was.

Q. Do you remember who that was who told you that you had to be able to read and write in order to vote? A. No, ma'am, I sure don't. It was about four or five men and about two women up there. They was upstairs and I was downstairs. Now, who they was I don't know.

Q. Did you learn how to sign your name? Can you sign your name? A. Well, can't nobody read it if I sign it.

Q. You can read it if you sign it, can't you? A. That's right. I'll tell you—I've been getting checks. I never have

to endorse a check. I always let the other man endorse it and I take a pencil and make an 'X'.

Q. Did you learn how to read a little bit? A. Well, all I learnt I learnt in Sunday School. I worked every day, seven days, I would go—

Q. But you did learn how to read a little bit, is that right? A. Well, I learnt that through the Sunday School. I've been in the church 52 years and I've been attending Sunday School for about 47 years. All I ever learnt [332] I learnt it through Sunday School.

Q. I see. I'm going to show you a piece of paper with some words on it and I want you to tell me what words can read on there. If I can find it, I'll show it to you. Defendant's exhibit two. Now, you just take your time. I want you to tell me what words you can read. A. Well, I believe I know these first two. Every. Person. I know them two words.

Q. You go on. You say what words you can read. A. Every. Person. Able. To. Read. And. Write. I understand that all right. I don't know what that is. I don't know what that word is. Every. Person. Shall. Be. Able. To. Read. And. Write. And I don't know what that is. That's all I know.

Q. Okay. That's real good. That's just fine. About how long ago do you think you were told that you couldn't vote because you couldn't read and write? How long ago was that? A. That was last September at the school.

Q. It was while you were working at the school? A. that's right.

Q. I see. A. That's right.

Q. Has any registrar ever come around to your house and [333] tried to get you to register to vote? A. Never has.

Q. Have you ever heard of a registrar coming down to your neighborhood to get people to register to vote? A. No, ma'am. If they did, I ain't never heard of it.

MISS GALLAGHER: I have no further questions.

BY MR. STOTT:

Q. Mr. Stringfellow, you say that you have voted in a presidential election? A. That's right.

Q. How many have you voted in, would you say? A. Just one.

Q. Do you remember who was running at that time, the one that you voted in? A. It seems to me like—I don't know. President Stevenson, I believe he was one of the men.

Q. Adalai Stevenson and Eisenhower? A. That's right.

Q. Is that when it was? A. That's right.

Q. They let you vote then, didn't they? A. They had this card with two X's on it and one side said yes and the other side said no. This man showed me where to mark at.

[334] Q. Did you tell him who you wanted to vote for? A. That's right.

Q. And he showed you then where to mark for the man that you wanted to vote for? A. That's right.

Q. And you voted for the man you wanted to vote for? A. That's right.

Q. Now, this election that you said was last September, when somebody told you you couldn't vote, that was September, 1966? A. That's right.

Q. And that was after school had started down at South Gastonia? A. That's right.

Q. And you were working there at the school at that time? A. That's right.

Q. And they were having an election that day, were they? A. That's right.

Q. And you happened to come upstairs? A. Well, I went up there with the intention of voting but I met this white fellow coming down the stairs, and this is what he told me, said—he said he never got to vote. I asked him why and he said because he couldn't read and write.

[335] Q. The white man told you that? A. He told me that.

Q. And what did you do after that, Mr. Stringfellow? A. I went on anyhow for my own self. When I went up

there, there was a man that asked me could I read and write. I told him no. He said, 'Well, you can't vote'.

Q. That was the same day of the election? A. About the same day.

Q. Now, that was not an election for the president, was it? That was for something else, wasn't it? A. That's right.

Q. That was for a school bond election, wasn't it? Is that what it was for, some school bonds? A. Must have been. I believe it was that.

Q. You're not sure about that? A. I ain't sure but it was to vote.

Q. The only other time you had ever been to vote was when you went to vote that time when Stevenson and Eisenhower were running? A. That's right. That was my first and my last.

Q. Except the time last September? A. Except when I went up there to vote and they said I couldn't vote on account of I couldn't read and write.

Q. That was last September? A. That's right.

[336] Q. The only times you have been to vote were those two times? A. That's right.

Q. And one time they let you vote and the next time they said you couldn't vote, is that right? A. That's right.

Q. Have you tried to vote any since then? A. No, sir. I hadn't tried.

Q. Have you been back to try to register since then? A. No, sir. I didn't know where to register at.

Q. You don't know where to go? A. That was my biggest handicap. I didn't know. All I know now is what white folks learn to me. Didn't nobody tell me about where to go or how to do it.

Q. You don't even know now where to go to register to vote, is that right? A. That's right. I don't know yet.

Q. I see. A. That's what I'm wanting to find out.

Q. So you can register and vote? A. That's right.

Q. You want to vote, don't you? A. Sure.

Q. Now, where do you live? Tell me exactly where you live. [337] A. Down the York Road and go off the Ratchford Road. I live at 427.

Q. 427 Ratchford Road? A. That's right.

Q. Do you know Mr. Weaver Byrd? A. Sure, I know him. He lives on the street down there next to Bill's Store.

* * * * *

A. That's right. I know him.

Q. Now, you don't mind asking Mr. Weaver Byrd where you should go to register and vote, do you? A. No, sir. I see him practically every week.

Q. The day last September when you went up there to vote, was Mr. Byrd there? A. Yeah, he was there. That's right.

Q. And there were several other people there? A. That's right, several more. He sure was there.

Q. And when you went up there to vote last September, you didn't know whether you had registered to vote in that election or not, did you? A. That's right.

Q. You didn't know? A. No. I know I never registered.

Q. You knew that you hadn't registered? A. I knowed that.

[338] Q. And you knew you hadn't even tried to register at that time, is that right? A. Well, at that time I didn't know anything about where to register. Hadn't nobody said nothing to me about it.

Q. Had you asked anybody about it? A. No, I never asked anybody about it.

MR. STOTT: That's all I care to ask him.

BY MISS GALLAGHER:

Q. Just a few more. When you went up there, did you go up there to register? A. Well, I went for whatever was going on. I didn't know whether it was to register or vote. I went there intending to vote.

Q. And what did the man tell you? A. He said if I couldn't read and write I couldn't vote.

Q. He didn't say that you couldn't vote because you weren't registered; he said you couldn't vote because you couldn't read and write, is that right? A. He never said that. He said if I couldn't read the Constitution I couldn't vote.

Q. Now, this white man that came down and told you that he couldn't—whatever he couldn't do was because he couldn't read and write, did he go up to register or did he go up to vote, or do you know? [339] A. I don't know which one he went up for. I guess he couldn't read and write and I couldn't read and write. Both of us were turned down. I don't know what we were turned down on.

Q. But they said it was because you couldn't read and write? A. That's what they said. That's the only thing. He never said had I registered. He said because of my reading and writing.

Q. Do you know whether that white man ever got registered or voted after that? A. No, ma'am, I don't. The principal told me this morning—I talked to him concerning this here. That's the reason I said all I learnt I learnt from a white man. He told me if I find the registering place, for me to go ahead and to try to register so I'll be able to vote in this here school board election. He told me to do that this morning.

Q. Do you have to be able to read and write now in order to register, do you think? A. It seems like to me you don't, not to register.

Q. You don't have to be able to? A. No, ma'am. If that was the case, there's a heap of folks that wouldn't get a chance to because there's a lot of folks that's plumb dummies.

[340] Q. Would you like to register and vote? A. Yes, ma'am. I would like to do things that's right. I'll have to make preparations for registering if I find a registering place. I asked Mr. Beam about it this morning.

MISS GALLAGHER: That's all.

BY MR. STOTT:

Q. Now, the Mr. Beam that you talked to today is the principal of the South Gastonia School, isn't he? A. That's right.

Q. And he told you that he would help you to find out where to register so you could register? A. That's right. he told me that,

Q. And that's what you want to do? A. That's right. He said that the school bond voting will be—I think he said August the first or something along in there. He told me to go ahead and register if I find a place to register.

Q. And you understand that you can register even though you can't read and write, don't you? A. That's right. That's exactly right.

Q. And it was a white man that told you the same day that they told you you couldn't register that he had been denied the right to vote, too, because he couldn't read and write, isn't that right? [341] A. That's right. I was going up and he was coming down.

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[344] DEPOSITION OF
JAMES ELMER RADFORD

MR. WOLF: Let the record reflect that Mr. Radford was registered on April 28th, 1964, in Precinct 29 by Helen Brafford.

BY MR. WOLF:

Q. Mr. Radford, will you please give us your full name? A. James Elmer Radford.

Q. And where do you live? A. Lowell, in Peerless Mill Village. Oakland Street, 500.

Q. Is there a number on Oakland Street? A. 500 Oakland Street. That's the house number.

[345] Q. Is there a city name?

MR. STOTT: Lowell.

MISS GALLAGHER: Lowell.

Q. (By Mr. Wolf) How long have you lived there? A. Well, off and on for the last fifteen years.

Q. Have you lived in Gaston County for the last fifteen years? A. No, sir. It's been about ten years.

Q. You've lived the last ten years in Gaston County? A. Yes, sir.

Q. I see. Did you go to school in Gaston County? A. Yes, sir. I went to school about a year or two. I'd been living down in here way before I was married.

Q. How many years did you go to school? A. I went a couple or three years.

Q. The first grade, second grade, and third grade? A. I never did go through the third.

Q. And then you left school? A. Yes, sir.

Q. Have you gone back to school since then? A. No, sir.

Q. Are you registered to vote? A. As far as I know I am.

Q. Do you remember when you registered first? [346] A. It's been right at four to five years.

Q. About four or five years ago. And you hadn't been registered before that? A. No, sir.

Q. You don't remember voting prior to three or four or five years ago? A. No, sir.

Q. Have you voted since you have been registered? A. I voted and registered the same day.

Q. You voted and registered the same day. Have you voted since then? A. No, sir.

Q. When you went to register that day, do you remember what the registrar told you, the person there told you or asked you? A. No, sir.

Q. Did he ask you any questions at all? A. Well, now, that's something I don't exactly remember.

Q. Do you remember if he asked you if you could read or write? A. Yes, sir. I told him no.

Q. You told him no? A. That's right.

Q. You cannot read or write? A. No, sir, nothing but my name.

[347] Q. Just your name? A. That's right.

Q. You can sign your name but that's about it? A. That's right.

Q. You say you know how to sign your name. Is this your name here? A. Yes, sir.

Q. Is that your signature? A. It don't look like it but it could be.

Q. I could be but it doesn't look like it. Well— A. It's my name though.

Q. Do you recall signing this? A. No, sir.

Q. Look at it carefully again. Is it or is it not your signature? A. It's my name.

Q. Do you think you signed it? A. I probably did.

Q. Pardon: A. I reckon I did, but—

Q. You reckon you did but you're not sure? A. That's right. I can't write that good.

Q. You don't think you can write that good. Well, when you were there, do you remember if anyone was with you? Was your wife with you? [348] A. She can't write either. There wasn't no one but me.

MR. WOLF: Would you like to look at this, Mr. Stott? A. I don't remember if I signed it or not.

MR. WOLF: Are you willing to stipulate this into the record?

MR. STOTT: Yes, you can put it in the record as an exhibit.

MR. WOLF: Defendant's exhibit number 33.

Q. (By Mr. Wolf) You say you have not voted since that one day? A. No, sir.

Q. And you had not voted before that day? A. No, sir.

* * * * *

BY MR. STOTT:

Q. Had you ever tried to register before this time, Mr. Radford? A. No, sir.

Q. The only time that you ever went to register they registered you, is that right? A. Yes, sir.

Q. Did they come to your house to register you or did [349] you go to the polling place? A. I went to the city hall in Lowell.

Q. In Lowell? A. Yes, sir.

Q. And you told them you wanted to register? A. Yes, sir.

Q. And they let you register? A. Yes, sir.

Q. And then you voted in the presidential election? A. That's something I—

Q. You don't remember? A. I don't remember.

Q. Do you sign your payroll checks? A. Yes, sir.

Q. How do you sign your payroll checks? A. James E. James E. Radford.

Q. I want you to, if you will, write on this piece of paper your name, James Elmer Radford. Just pull your chair up and write your name anywhere along there. A. My full name?

Q. Yes, sir. James Elmer Radford. You know how to spell it, don't you? A. Yes, sir. All right. That's something I had to learn to cash my check with.

Q. Now, you just signed your name, did you, on this [350] piece of paper which is marked plaintiff's exhibit number five, and you signed your name 'James Elmer Radford', is that correct? A. Yes, sir.

Q. Sir? A. Yes, sir.

MR. STOTT: I offer that into evidence as plaintiff's exhibit number five.

Q. (By Mr. Stott) Did you learn how to read any at all when you went to school? A. No, sir. I learned how to write my name after I come out of school.

Q. Do you read the paper any? A. No.

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BY MR. WOLF:

Q. Mr. Radford, did you just say that you always signed your checks 'James E. Radford'? A. Yes, sir.

Q. You normally do not use your full middle name, Elmer? A. No, sir.

Q. Why is it you signed it Elmer there? A. He said to sign my full name.

Q. But you normally just sign it 'E'? A. Most of the time I go by Elmer but when I went to [351] work this time they put it 'James E.'

MR. WOLF: All right.

BY MR. STOTT:

Q. When you went down to register at the Lowell City Hall, they had you to sign your name at that time on a piece of paper, didn't they? A. I don't remember whether I signed it or whether they did.

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DEPOSITION OF
J. D. STEVENS

MR. WOLF: Let the record show that Mr. Stevens was registered on May 3, 1962, in Precinct 25 by R. L. Leeper, Registrar.

BY MR. WOLF:

Q. Mr. Stevens, we would appreciate it if you could talk up and speak slowly so that the court reporter may record your answers to the questions. Would you please give us your full name? A. J. D. Stevens.

Q. And what is your address, Mr. Stevens, your home [355] address? A. 328 Mayflower, Cramerton.

Q. How long have you lived in Gaston County? A. I've been living there in that house 21 years.

Q. 21 years? A. Yes, sir.

Q. And had you lived in the county before then? A. Yeah. I lived there and I went back in the mountains and stayed seven months and then moved back.

Q. You lived in the county for a short period of time, you then left and then came back into the county and you've been living here for 21 years ever since? A. That's right.

Q. Did you go to school here in Gaston County? A. No.

Q. Have you been to school at all? A. Well, I went to the fourth grade. Then my mother died and we had to get out and do the best way we could.

Q. And have you been to school since that time? A. No.

Q. You have not gone back to school. Are you registered to vote in Gaston County? A. Yes.

Q. Do you remember when you first registered to vote?
[356] A. When I first registered to vote?

Q. Yes, sir. A. When this county was wet, when it sold whiskey.

Q. Was that about twenty years ago or fifteen years ago? A. It's been longer than that, ain't it? I don't know how long it's been.

Q. Do you recall voting at that time? Do you remember voting twenty years ago? Have you voted since you registered? A. Yes, I've voted.

Q. Do you remember voting in the presidential elections? A. Yeah, this last time I have.

Q. You voted when President Johnson and Senator Goldwater ran? Did you vote in that election? A. No.

Q. Was it in the one before that, in the Kennedy election? A. When Kennedy was in there.

Q. When Kennedy ran, did you vote then? A. Yes, sir.

Q. Did you vote when President Roosevelt ran? A. No.

Q. You don't remember voting then. Now, you said you registered about fifteen or twenty years ago or so.
[357] Have you registered since then again? A. Yes. I registered in '64 or '65. I have forgot now just when I registered.

Q. And at that time did you go down to the registrar's office? Did you go down to some place and register? A. I went down to Paul Featherstone's store, at the washerette near Paul Featherstone's store.

Q. Is that where you registered to vote? A. Yes.

Q. Who was there? Were there election officials there? Was there somebody there with a book? A. No. Wasn't nobody there except a man and a woman. They registered me.

Q. When you went in there, did you tell them you wanted to vote—to register to vote? A. I told them I wanted to register to vote.

Q. What did they say to you? Did they ask you any questions? A. They asked me could I read.

Q. They asked you if you could read? A. Yeah.

Q. What was your answer? A. I told them no.

Q. Can you read? A. No.

[358] Q. Did they ask you if you could write? A. I told them I could write my name is all.

Q. Pardon? A. I told them I could write my name is all.

Q. You said you couldn't read or write but you could sign your own name? A. That's right.

Q. Did they ask you to sign your name? A. Yeah. I signed it.

Q. On a slip of paper? A. Sir?

Q. Did they ask you to sign your name on a sheet of paper? A. I forgot whether it was a sheet of paper or whether it was a card.

Q. Let me show you this, Mr. Stevens, Do you recall signing your name here? A. Yeah. It looks kind of like my writing.

Q. Does that look like your signature? A. Kind of looks like it.

Q. All right. And did you sign this when you were down there at that time? A. I believe I did.

Q. Okay. Fine. A. I ain't for sure, though.

[359] MR. WOLF: Do you have any objection to letting this in?

MR. STOTT: No.

MR. WOLF: This is defendant's exhibit 34.

Q. (By Mr. Wolf) Have you voted recently, Mr. Stevens; in the last year or two have you voted? A. No.

Q. Have you voted in any local elections? A. In what?

Q. Local elections, for the officials around here. A. No.

Q. You have just voted in the presidential elections? You've just voted once or twice in those? A. Yes, sir.

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[362] DEPOSITION OF
JOHN WILLIAM PATTERSON

BY MISS GALLAGHER:

Q. Mr. Patterson, for the record would you state your full name, please? A. John William Patterson.

Q. Where do you live? A. 602 South Mountain Street, Cherryville.

Q. What is your race, sir? A. Colored.

Q. How old are you? A. 66.

[363] Q. How long have you been living in Gaston County? A. All my life.

Q. Are you registered to vote in Gaston County? A. Yes, ma'am.

Q. Have you been registered for a number of years? A. Oh, about six years, something like that.

Q. Before the first time that you got registered, did you have some difficulty registering before that? A. Yes, ma'am.

Q. Would you explain what kind of difficulty you had?

A. Well, when I went to register, there was four or five more of us, and they give us an appointment and every time we would go there wouldn't be nobody there.

Q. That happened a couple of times, is that right? A. Yes, ma'am.

Q. That was before the first time that you registered? A. Yes, ma'am.

Q. And that was some years back? A. Yes, ma'am.

Q. Do you remember when they made—do you remember when they had the new registration about five years ago? A. I think it was around 1964.

Q. Do you remember when everybody had to re-register? A. Yes, ma'am.

Q. Did you re-register at that time? [364] A. Yes, ma'am.

Q. Do you know a man by the name of Frank Miller? A. Yes, ma'am.

Q. Did you take him up to re-register at the time the new books were made? A. Yes.

Q. Did he—is he alive or dead now? A. He's dead now.

Q. Could he read and write very well?

MR. STOTT: Object.

A. No, he couldn't read.

MR. STOTT: Object to all this.

Q. (By Miss Gallagher) You can go ahead and answer when he objects. That's something that we'll settle at the trial. Did you take Mr. Miller up to register? A. Yeah.

Q. And did he get registered? A. No, he didn't get registered.

Q. Why not?

MR. STOTT: Objection.

Q. (By Miss Gallagher) That's all right. Go on. A. He said they couldn't register nobody that couldn't read.

Q. Did you hear the registrar say that? A. Yeah.

[365] MR. STOTT: Move to strike that. Object to the question and move to strike the answer.

Q. (By Miss Gallagher) Sometime after that did you have some conversation with the registrar about people who could register? A. I did.

Q. What did he say? A. He said—

MR. STOTT: Object, unless he knows who 'he' is.

Q. (By Miss Gallagher) I keep saying the registrar. Who is that? A. Mr. Cliff Stroupe.

Q. What did Mr. Stroupe say to you?

MR. STOTT: Objection.

A. He told me he couldn't register anybody that couldn't read and told me not to bring nobody up there.

Q. (By Miss Gallagher) And since that time have you ever brought anybody that couldn't read? A. No. He told me not to, and he told me again, since that time, not to bring nobody.

Q. I'll get to that in a minute. Let me ask you a couple of other questions. Have you been active in encouraging people to register and vote in Cherryville? A. Yes, ma'am.

Q. Have you taken a number of people to register?

[366] A. Yes, ma'am.

Q. About how many people have you taken to register?

A. Oh, I imagine about a couple hundred or more.

Q. Do you know people who can't read and write? A. Yes.

* * * * *

Q. Have you taken anybody who can't read and write to register since you were told that?

MR. STOTT: Objection. A. No, ma'am.

Q. (By Miss Gallagher) Has any registrar ever come to your house and asked if you wanted to register to vote? A. No, ma'am.

Q. Has any registrar ever come to your neighborhood and asked people if they wanted to register to vote? A. No.

Q. You started to say that since the first time you were told not to bring people who couldn't read and write you were told again. Would you tell us about that, please?

MR. STOTT: Objection.

A. Well, I met him up on the street and he said they had a new registration to straighten up the old books. He said not to bring anybody that couldn't read.

[367] Q. Was this the same person? A. The same one.

Q. Thank you, Mr. Patterson.

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BY MR. STOTT:

Q. Mr. Cliff Stroupe was the registrar at the box that you vote at, is that correct? A. Yes, sir.

Q. You have known Mr. Cliff for a long time, haven't you? A. Yes, sir. I've been knowing him a long time.

Q. And Mr. Cliff Stroupe is a good man, isn't he? A. He's a fine man.

Q. And he told you that under the laws of the State of North Carolina somebody who couldn't read and write was not permitted to register, didn't he? A. That's right.

Q. And that the laws of the State of North Carolina wouldn't permit him as registrar to register anybody who couldn't read and write? That's what he told you, isn't it? A. That's right.

Q. But you can read and write, can't you? A. Yes.

Q. You can? [368] A. Yes, sir.

Q. You can sign your name? A. Yes, sir.

Q. And you don't have any difficulty reading at all, do you? A. No, sir.

Q. And when you went to register, you got registered on April 28th, 1962, didn't you? A. That's right.

Q. And that's when the new registration went into effect? A. Yes.

Q. You had been registered before, hadn't you? A. Yes.

Q. How long have you been registered to vote in Gaston County? A. I reckon about five or six years.

Q. Before the new registration? A. Yeah. Well, we had to re-register this spring. They had to straighten out the books.

Q. That was for the city elections? A. That was the city and the county election.

Q. That wasn't the national presidential election? A. No.

Q. Right. Now, on April 28th, 1962, you went in to [369] register and Mr. Cliff Stroupe was the registrar and he let you register, didn't he? A. Yes, sir.

Q. And did he give you any kind of test at that time, Mr. Patterson? A. Well, we had to read a little.

Q. And you could read it all right, couldn't you? A. Yes, sir.

Q. Do you remember what you had to read? A. It was just a few words. I don't know what it said.

Q. I show you this paperwriting, which is defendant's exhibit number two, and ask you to read these words at the top of this page for me. A. 'Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.'

Q. I show you this paperwriting, which is marked for identification as plaintiff's exhibit number 6, and ask you if that is your signature down at the bottom in the left-hand corner? A. Yes, sir.

Q. And that signature is John William Patterson? A. That's right.

Q. And you signed that before Mr. Cliff Stroupe in

Cherryville when you registered, is that right? [370] A. Yes, sir.

Q. You have never been denied the right to vote in this county, have you? A. No.

Q. You said that you had taken some people up there to register in the past but they were unable to register because they couldn't read and write? A. That's right.

Q. Was that before 1962? A. No.

Q. Was that before the new registration or afterwards? A. Since then.

Q. Since the new registration? A. That's right.

Q. But those people were not, you say, permitted to register because they couldn't read and write? A. That's right.

Q. And you understood the laws of the State of North Carolina required that a person be able to read and write, didn't you, to register? A. Yes, sir.

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BY MISS GALLAGHER:

Q. One more question, sir. What was the race of the people that you took up to register? [371] A. Well, they was male and female.

Q. Were they colored people or white? A. All colored.

Q. All colored.

* * * * *

BY MR. STOTT:

Q. I want to ask him one or two other questions. So far as the election officials, the registrars and the judges and so on up in Cherryville, they have always treated you good, haven't they, Mr. Patterson? A. Yes, sir, just fine.

MR. STOTT: That's all.

BY MISS GALLAGHER:

Q. When you say they have always treated you fine, are you referring to the time since you've been registered? A. Since I've been registered, yes.

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[2] DEPOSITION OF MARALEE QUERY

It is stipulated that Mrs. Maralee Query is a white person.

MR. STOTT: Would you please state your full name? A. Maralee S. Query.

Q. Where do you live Mrs. Query? A. 610 Eastwood Drive, Gastonia, North Carolina.

Q. Are you presently employed? A. Yes, sir.

Q. By whom? A. Gaston County.

Q. And in what capacity are you employed by the County of Gaston? A. In the tax service.

Q. When did you start that employment in the tax office? A. December 1, 1964.

Q. Prior to that time, were you an employee of Gaston County? A. Yes, sir.

Q. And in what capacity were you employed prior to December 1, 1964 by the County of Gaston? [3] A. From July 5, 1963 until December 1, 1964, I was Executive Secretary of the Elections Board of Gaston County.

Q. Your job as the Executive Secretary of the Gaston County Board of Elections, what did it consist of? A. Taking the registrations of applicants and receiving from other registrars the applications and they had taken from people wishing to register; compiling those and doing the paper work that was required and having them in the precinct books for the election.

Q. Were you working directly under the Chairman of the Gaston County Board of Elections? A. Yes sir.

Q. And at that time, who was Chairman? A. Mr. Mack Davis from July until April, July of 1963 until April of 1964. Then Mr. Lin Hollowell, Jr. from April of 1964 until December 1 of 1964.

Q. During the time that you were Executive Secretary of the Board of Elections, did you have occasion to assist in the registration of voters in Gaston County? A. Yes, I did.

Q. And did you have charge of the records of those who were registered to vote in Gaston County? A. Yes sir.

Q. During that period of time, do you recall what type of test, if any, was given to prospective registered voters? A. An oral test was given from July of 1963 until May, I believe it was May, of 1964 when the Civil Rights Act was passed. Then we were required to have a written test.

Q. And after 1964, was a different type test administered to your knowledge, than was administered prior to 1964? A. Yes.

Q. And the type of written test that you refer to which was given beginning sometime in 1964, could you relate to us what that test consisted of, or the type of test that was used? [4] A. We were required to use a portion of our State Constitution and we had four or six selections. They were to write only one.

Q. And did you, during the time that you served as Executive Secretary of the Gaston County Board of Elections, have occasion to register people yourself? A. Yes, sir.

Q. What hours did you maintain at the County Board of Elections office? A. From eight until five, Monday through Friday.

Q. During those hours of the day, were the registration books open for people to register if they came and elected to do so? A. Yes, sir.

Q. Did you register people in the Elections Office during the period of time that you acted as Executive Secretary? A. Yes.

Q. Do you recall whether or not you registered people of the white and Negro race? A. Yes, sir.

Q. Do you recall whether or not, during the period of time that you were Executive Secretary, did you ever refuse to register either white or Negro in the Elections Office because of illiteracy? A. One time.

Q. Do you recall that specific incident? A. I do not remember the man's name, but he was a farmer in the County. He said he could not read.

Q. Do you recall what his race was? A. Caucasian.

Q. At that time, state whether or not that person at-

tempted to take the test? A. He would not attempt. He refused

Q. Did you give him the opportunity to do so? A. I did. I insisted that he try.

[5] Q. During the period of time that you served from July 5, 1963 until December 1, 1964, did you have any complaints from any citizen of Gaston County because of a refusal to register any person because of a literacy test that was being given? A. No, sir.

Q. Did you ever have any complaints from any Negro citizen for having been denied the right to register because of illiteracy or because of any other reason? A. No, sir.

Q. While you acted as Executive Secretary, did you keep any written test of anyone who had attempted to take the test and subsequently denied the right to register? A. No, sir.

Q. During that period of time did you have any records of written tests or did you keep any records of any tests, written tests, that some person attempted to take, but was unable to do so and because they were unable to take the test, they were then denied the right to register? A. We had no one that made an attempt on a written test. That is, we had no one turned down. We had no one that was turned down if they attempted to do the written test.

Q. Is that the reason that there were no records of any written tests of a person who had been denied the right to register? A. That is right. We had been so instructed to keep them if they came in from the other registrars, but we had none turned in.

Q. From whom did you get that instruction? A. From our Chairman.

Q. By that, you mean the Chairman of the Board of Elections? A. And his Board.

Q. Did you have any occasion to assist citizens of this County to register at places other than at the County Elections Office? A. Yes, I did.

Q. Could you tell us Mrs. Query what hours and what times other than [6] the regular office hours you assisted

in registering voters in Gaston County? A. The hours were from seven to nine at night or until we finished up. We began at seven and I went to six different areas other than the Elections Office.

Q. Do you recall the dates that you went, or the approximate dates, that you went to other, some place other than the Elections Office to assist in the registration of voters? A. This was in the Spring of 1964 before the primary. The month and dates I do not recall. I would believe it would have been in April.

Q. Of 1964? A. Of 1964.

Q. And these six times that you did do this was that from seven p.m. until nine p.m. at night? A. That is right.

Q. State whether or not you were paid any additional compensation other than your regular salary for this work that you did at night. A. I don't think so.

Q. Well, were you or were you not. If you don't know, it is okay. A. I don't know, I am sorry.

Q. Well, did you receive the same salary whether you worked your regular office hours or whether you worked additional time at night? A. We had additional pay.

Q. Could you state to us, or tell us, the first time in the Spring of 1964 that you made some arrangements to register people at night? A. Dr. Floyd came to me and asked if I would . . .

Q. Now, wait a minute. You say Dr. Floyd? A. Yes.

Q. Well, you can't tell what he said. Did you have a conversation with Dr. C. W. Floyd about registering Negro people? A. Yes.

[7] Q. As a result of that conversation, did you then arrange to go to some places at night to register Negroes? A. That is right.

Q. Do you recall the first place that you went to register Negroes at a time other than regular office hours? A. Yes.

Q. What was the first place? A. I do not remember the woman's name nor the street, but she runs a beauty parlor, I believe off of Pryor Street and we went to the home.

Q. Was that the first time that you recall that you went to register at a time other than your regular office hours? A. Yes, sir.

Q. Now this home of the person that you went to, was that a white person or a Negro? A. A Negro.

Q. What hours did you stay at the home of this Negro on that occasion? A. We went at seven and the stated hours were seven to nine. We always worked until we finished up.

Q. Now, you say we went. Who do you mean by "we"? A. I had other girls from the office go with me.

Q. Do you recall one of their names, or any of their names? A. Mrs. Glenn.

Q. Is that Mrs. Ruth Glenn? A. Mrs. Ruth Glenn.

Q. Did you register any Negroes on that occasion? A. Yes.

[8] Q. Do you recall how many Negroes you registered on that occasion, Mrs. Query? A. No, I do not.

Q. On that occasion, did you assist or would you tell us how you proceeded to register the Negro people on that occasion? A. I did assist. I do not recall how many went with me, I believe there were three. One worked in the dining room and two in the living room at two separate tables that were set up and we all registered as they came in and as they would arrive, they stood in line until the one in front of them had finished, but the number, I do not remember.

Q. What was the reason for your going to the home of Negro lady you mentioned to register Negroes at night? A. This was for a group of people who worked hours longer than our Board was open, who also worked on Saturday and didn't have an opportunity to register, such as maids who worked in homes, a lot of them full time, men who worked as watchmen or worked in our textile plants and this gave them an opportunity to be registered. They could not come to the office downtown.

Q. Mrs. Query, would you please tell us then, the other five places that you went to register Negro voters in addi-

tion to the one that you have already mentioned. A. We went to the home of Melinda Earl, we went to Ervin Center, there was a Club on North Avon Street, I do not remember the name of that Club, we went one time over into Victory Precinct area and one time in the Firestone Precinct area.

Q. Now, Melinda Earl, was that a residence? A. Yes.

Q. Is Melinda Earl a white person or Negro? A. She is Negro.

Q. Did you—how long did you stay at her home? A. We went at 7:00 and I do not remember how long we stayed, whether we left at nine. No, we did not leave at nine, because that is the night that we registered about one hundred people.

Q. Then you mentioned that you went on one occasion to the Elks Club. A. No, that was the Ervin Center.

[9] Q. The Ervin Center. Now, where is the Ervin Center located, if you know? A. It is close to the Highland Park ballfield.

Q. And did you go to the Ervin Center for the purpose of registering Negroes? A. That is right.

Q. Did you register Negroes on that occasion? A. We did.

Q. Was Dr. C. W. Floyd present on this occasion? A. Yes, sir.

Q. And Dr. C. W. Floyd is a Negro dentist in Gastonia? A. That is right.

Q. Did you go to that location, that is the Ervin Center, at night? A. That is right.

Q. Now, the Club on Avon Street that you mentioned, was that some type of private club or do you know? A. This Club on North Avon was used by some church, I believe, for the young people.

Q. Do you know whether or not that was a Negro church? A. Yes, it was.

Q. And what hours did you go to the Club on Avon Street? A. From seven to nine. The arranged hours were from seven to nine.

Q. And for what purpose did you go to that location? A. To register anyone who might come.

Q. Either white or Negro? A. Yes, sir.

Q. You mentioned that you went to the Victory Precinct area on one occasion. A. That was to a Negro woman's home. I do not remember her name.

Q. And was anyone with you any other person from the Elections Office? [10] A. I do not recall.

Q. And, did you register any Negroes on that occasion? A. A few.

Q. What was the reason for going to that area at night? A. We had been told that there was a few that wanted to register and they could not come in when the office was open.

Q. And was it your purpose then to make it easy for them, the Negroes in the Victory Precinct area to register, is that the reason you went? A. Yes, sir.

Q. Then you stated that you went on one occasion to the Firestone Mill area. A. That is right.

Q. Was that at night also? A. That is right.

Q. Where did you go on that occasion? A. I do not remember the street. That was in a home.

Q. Was that the home of a white or a Negro? A. A Negro.

Q. And did you register some Negroes on that occasion? A. A few.

Q. And for what purpose did you go to the Firestone Precinct area? A. These are some that could not come in during the day to register.

Q. Over what period of time did you do this, Mrs. Query? A. It was just about a month before our books closed for our 1964 Primary.

Q. During all of these six occasions, do you recall whether or not anybody, any Negro was denied the right to register on the basis of literacy? A. No.

Q. You don't recall? [11] A. There was no one denied.

Q. The right to register? A. The right to register.

Q. Because of illiteracy, is that correct? A. That is right. Q. Do you know whether any Negro was denied the right to register on any of these occasions for any other reason? A. No, sir. But you refresh my memory. I do recall an incident. I had loaned my glasses to someone who had not brought their glasses and they were able to read.

Q. Did you let someone have your glasses? A. Yes.

Q. Was that a Negro? A. Yes.

Q. Where was that? A. I believe that was at Mrs. Earl's. I am not sure.

Q. After you were kind enough to let them use your own glasses, that person was able to read? A. That is right.

Q. Then you didn't hesitate to assist that Negro to register? A. No, sir.

Q. Do you recall any other incidences of similar nature to that, that you personally assisted a Negro or Negroes to register? A. We had some who were slower in reading and writing than others and we were always very patient and the girls that worked with me, I had instructed them to be patient with them and after our written test went, if they were slow in writing, then we gave them a seat in a desk so that they could take their time in writing out their portion of the Constitution.

[12] Q. Was that for those who came to the office to register or did that also include those that you were trying to help register at these six places you mentioned? A. At the six places mentioned, we did not have the written, it was just oral tests that we were giving.

Q. If you had any person on those six occasions that had difficulty reading, how did you do with those as far as registering? A. As they came to a word such as the word "constitution" and could not pronounce it, we would pronounce it for them and explain to them what it was.

Q. And did you permit that person to register? A. We did, because he could read the rest of the oath.

Q. During the entire time that you served as Executive Secretary from July 5, 1963 to December 1, 1964, did you personally refuse anyone the right to register, white or Ne-

gro, because of illiteracy? A. Only the one man that would not make an attempt to read on the oral.

Q. Mrs. Query, if you received a request from a citizen of Gaston County, either white or Negro, to come to their home to register them, or him or her, would you honor that request? A. Yes.

Q. And did you do that on occasions? If you were called? A. Once or twice. If they were in my neighborhood, they came to my home.

Q. Did you ever have any request from any Negro to come to their home to register them? A. No, I did not.

Q. But it was your policy, had you received such a request, you would have honored that request? A. Surely.

MR. STOTT: That is all I care to ask the witness at this time. Your witness.

[13] MISS GALLAGHER: Mrs. Query, during the time that you were Registrar, it was authorized by the Board of Elections for you and other registrars to conduct registrations at such places as you deemed fit, is that correct? A. Yes, sir.

Q. In other words, if you wanted to go out and have a registration some place, you went out and had the registration? A. I cleared it with the Board first.

Q. Is it your understanding that all the registrars cleared it with the Board first or were they authorized? A. They were authorized. Anyone requesting to register, they would register them.

Q. There were no restrictions on the time or place, were there? A. No.

Q You just described to us in some detail some registration drives which you had in the evening in various precincts, the primary purpose of which was to register the Negroes. Is it fair to restate your testimony that these drives were the results of contacts made by Dr. Floyd? A. Would you state your question?

Q. Were these drives the results of some efforts made by Dr. Floyd to organize these drives? A. Yes.

Q. Besides Dr. Floyd, did some other person or group

contact you and ask you if you would be kind enough to come various places and hold registrations in the evenings? A. We had no other contact?

Q. No other contact? Dr. Floyd – A. Was the only contact I had.

Q. He was the motivating force for these drives? A. That is right.

[14] Q. Between the time that you became Executive Secretary of the Elections Board in July of 1963 and April of 1964 when these drives commenced, did you ever before that go out into any Negro neighborhoods to register people? A. No, I had not.

Q. Do you know whether that was a practice among registrars in Gaston County? A. I do not.

Q. You never knew of such a drive that took place before you actually went out at Dr. Floyd's request, is that right? A. Yes. I did know that registrars made every effort the year before to get the people registered for the– that was the new loose leaf registration.

Q. Before the time that you went out on these drives with Dr. Floyd, had you ever been, perhaps I have asked you this, had you personally ever been in a Negro home for the purpose of registering people? A. No, I had had no request.

Q. With respect to the literacy test, it was your understanding that only people who were able to read and write would be allowed to register, is that right? A. Not write, read.

Q. All they had to be able to do was read? A. That is right. It was an oral test.

Q. It was your obligation under the law to make sure that they could read, is that right? A. That is right.

Q. Did you give a test to everybody who applied? A. Yes, we did.

Q. You didn't make any exceptions? A. Unless they refused.

Q. You are referring to this one white man who wouldn't take the test? A. Yes.

[15] Q. And I believe you testified that you tried to get him to take the test? A. Yes.

Q. And he just wouldn't do it? A. No.

Q. With that single exception, everybody took the test? A. That is right.

Q. And everybody had to read at least one sentence, is that right? A. Yes.

Q. You described an incident concerning a Negro man who forgot to bring his glasses with him. Now, when he came to you, did you hand him a piece of paper to read? A. I told him what was required.

Q. And did he say to you that he knew how to read, but had forgotten his glasses? A. That is right.

Q. And you then made the effort to give him your glasses? A. I did and I had several people come into the office that had forgotten their glasses.

Q. And you would not just take his word for the fact that he could read? A. No.

Q. You wanted him to show you? A. Yes.

Q. And you let him use your glasses? A. Yes.

Q. Do you remember another incident where a Negro man had difficulty in reading the sentence that you gave him to read and you gave him the card to take and study? A. That is right.

[16] Q. Did he later come back and read it satisfactorily? A. He came back another time and read it satisfactorily and was registered.

Q. But you didn't register him when he couldn't do it to your satisfaction the first time? A. That is right.

Q. Did most of the people who came at these various registration drives seem to know that they would be required to take some kind of a little test? A. Yes.

Q. Was there publicity in the newspaper as to the requirements to register?

MR. STOTT: Objection. A. I do know that they had been informed through their churches and clubs what was required for them to register and at times we did have in the newspaper what was required.

Q. About the keeping or having test forms of people who had failed the test, the written test, you testified, I believe that you never received any tests of people who were not registered because they couldn't complete the test satisfactorily, is that correct? A. That is right. I did not receive any.

Q. You don't have any personal knowledge, do you, of whether there were in fact people whom various registrars might have rejected on that basis who never sent you the test? A. No, I do not.

Q. In Gaston County is it generally true that Negroes work for white people rather than white people working for Negroes? A. Generally, I cannot answer. But I do know they work in other areas because my son trained Negro boys and men and Negro women in Burlington Mill last year and I know they are in our businesses as well as in our homes.

Q. I realize that there are Negroes widely employed in Gaston, but wouldn't you say generally that the Negroes have occupied an economic position that isn't as good as the white people?

MR. STOTT: Object.

[17] A. I have worked with them in the hospital for a number of years.

Q. In what capacity? A. I was bookkeeper and I had one high school graduate who could keep just as good records as I could. I was acquainted with the orderlies, most of them high school graduates and just before I left, the nurses were coming in on the floors.

Q. There were Negro nurses? A. And they were excellent nurses.

Q. Do you know any white person who has ever had a Negro maid? A. No, I do not.

Q. May I restate that question? Do you know any white people who have had Negro maids? A. Yes.

Q. There are a number of them? A. Yes.

Q. Do you know any Negroes who had white maids?

MR. STOTT: Object.

A. No, I do not know of anyone.

Q. Do you know that a number of Negroes are employed as janitors and in similar capacities? A. Yes.

Q. And isn't it true that until the past three or four years, the schools in Gaston County were completely segregated?

MR. STOTT: Object.

A. Not three or four years because they were in Ashley School with my son.

Q. What year was that? Wasn't that 1963 or 1964? The first year there were Negroes in the formerly all white schools in Gaston County? A. I do not know the date.

Q. It wasn't earlier than 1963 was it? [18] A. My son is a rising senior and was in his junior and senior year in high school. He is a rising senior in college.

MISS GALLAGHER: That is all I have.

MR. STOTT: Mrs. Query, you were asked whether or not in 1963 you had taken any steps in addition to keeping the office open to register voters. That was not a presidential election year was it? A. No sir. I had days with no phone ringing and no one coming in.

Q. But in 1964, that was a presidential election year? A. That is right.

Q. Do you account for the presidential election being the reason for the interest in registration that year? A. Yes, sir.

Q. Do you know any white men who are janitors in this County? Who work in similar jobs? A. Yes, we have them at the Courthouse.

Q. You stated that on one occasion Mrs. Glenn went with you to one place, Mrs. Ruth Glenn went with you to some place to assist in registration, registering Negroes, do you recall what place that was? A. It was the first place that I went in the home of a Negro woman who operates a beauty parlor.

Q. You don't recall that person's name? A. I do not recall her name. Mrs. Glenn did not go, but the registrar who lived on Morris Street went with me. Mrs. Glenn did not accompany me there, but did go to the home of Melinda Earl.

Q. Did you work any during the spring of 1964 with the Negro Woman's League? A. They were the ones sponsoring all six of these registrations.

Q. And so, you did work with that organization in addition to working with Dr. C. W. Floyd? A. That is right. They cleared it through Dr. Floyd, he would make the appointments with me.

[19] Q. To your knowledge, did some of the members of this Negro Woman's League attend or were they present at the time you were registering Negroes? A. Yes, they brought the people to the area where we were registering.

[2] DEPOSITION OF
J. CLIFF STROUD

Let The Record reflect that Mr. J. Clifton Stroud is white and is the registrar of Precinct No. 34 and resides at 100 South Elm Street, Cherryville, North Carolina.

MR. STOTT: Would you state your name? A. John Clifton Stroud.

Q. Mr. Stroud, you live in Cherryville, North Carolina. That is in Gaston County, isn't it? A. Yes.

Q. How long have you lived in Cherryville, North Carolina? A. I have been there about 70 years.

Q. Are you presently Registrar of Precinct No. 34 in Cherryville Township? A. Yes, sir.

Q. What box is that in Cherryville? A. Number 3.

Q. How long have you been registrar of that Precinct? A. Since 1962, April of 1962 when the new registration.

Q. When you say new registration, you mean when the new loose leaf registration system was installed in the County? A. That is right.

[3] Q. And you have served since that time in this precinct? A. Yes.

Q. During the time beginning April of 1962 when you became registrar, at that time, were there any type of literacy test used to register voters? A. Yes, sir.

Q. What type of test was being used at that time? A.

It was the writing and reading test.

Q. And reading and writing of what? A. Signing his name.

Q. And reading of what? Well, we had the oath that is what they furnished us.

Q. The registration oath? A: That is right.

Q. That registration oath does contain provisions from the State Constitution does it not? A. Yes.

Q. How long did you continue to use that test, Mr. Cliff? A. Well, now when we started there, the first day they crowded you know and they did away with that reading of the oath, but as long as he could sign his name, well, we registered him.

Q. When was that? A. That was in April, that was the beginning of the Registration.

Q. In 1962? A. That is right.

Q. Did you continue to use the reading and writing test up until sometime in 1964? A. I don't remember now, but you know, we had that literacy test, it was four sections of the Constitution and they required the voters to write one of those.

[4] Q. That was started sometime in 1964 when they changed the type of test? A. That is right.

Q. Were you furnished forms of that test from the County Board of Elections Office? A. Yes.

Q. And at time did you then start using that test? A. Yes.

Q. And did you continue using that written test up until the time that no test at all was used? A. That is right.

Q. And presently you are using no test whatever? A. That is right.

Q. In 1962, did you register both white and Negro in your Precinct? A. Yes.

Q. Do you recall whether or not you at any time denied any Negro citizen the right to register because of his or inability to pass the literacy test? A. I had one. One colored person.

Q. For what reason was that person not able to register?

A. He couldn't read or write.

Q. Did he attempt to take the test? A. No, said he wouldn't take it.

Q. Did you offer to give him the test? A. Yes.

Q. After you started using this written test where the Board of Elections supplied you with forms, did you ever have anyone to attempt to take that test that was refused to register? A. I don't recall if I did or not. I don't believe I did.

[5] Q. Do you know a man by the name of John Patterson? A. Yes, sir.

Q. He is a Negro man is he not? A. Right.

Q. Do you know of your own knowledge that he is registered in Precinct 34 in Cherryville, North Carolina? A. Yes.

Q. Do you recall him ever bringing any Negro to your precinct to register and one of them denied the right to register? A. Only one.

Q. Was that the one you referred to a while ago? A. Yes, sir. That is the only one that I remember.

Q. That was the one that refused, just said he didn't even want to attempt to take the test? A. That is right.

Q. Was John Patterson somewhat active in getting people to register in the Cherryville 34 Precinct? A. Yes, very active.

Q. Have you ever at anytime told John Patterson not to bring anybody to the polls if he couldn't read and write? A. I don't remember if I did or not. I just can't say. I don't believe I did.

Q. Do you recall whether or not from 1962 to the present time that you refused to register any white men? A. Oh, yes.

Q. Do you remember how many? A. I know of two.

Q. Two white men? A. That is right.

[6] Q. State whether or not that was 1962 or was that after 1962? A. That was 1962.

Q. Were these two men given the test or did they not want to take the test? A. They didn't want to take it. Couldn't read and couldn't write.

Q. After the written test was started, did you have anyone that you gave the test to that was refused the right to register? A. No.

Q. Now, the two white men that you stated that you rejected in 1962, did you ever subsequently register these two men? A. One of them is deceased, but the other one, I did register.

Q. One of the two? A. That is right.

Q. That was sometime later? A. Yes.

Q. Do you recall how long it was? A. No, I do not.

Q. Do you know whether or not the Negro man ever came back again to try to register? A. I haven't seen him since. I don't remember his name.

Q. Since Gaston County was placed under the Voting Rights Act, that is when the literacy test was suspended in this County, you have not administered any kind of test have you? A. No, sir.

Q. You have permitted any person to register that wanted to register regardless of race or color? A. That is right.

Q. Mr. Stroud, do you know a Negro man by the name of Frank Miller or did you know him? A. No, I do not.

[7] Q. You don't recall ever having anything published in the newspaper in Cherryville that a person could only register if they could read and write, do you? A. No, sir.

Q. During 1962, did John Patterson bring a number of Negro people there to register? A. Yes.

Q. And did you permit them to register? A. Yes, brought them to my home at night any time any day during the week.

Q. Did you permit a person to register anytime during the day or night? A. Yes.

Q. Did you ever go to any place other than the precinct, polling place to register voters? A. Went to one home, a white man.

Q. Did you ever go to any place other than this one white man's home? A. No, sir.

Q. Did you have white men and Negro men and women come to your home to register? A. Yes.

Q. What was your reason for going to this white man's home? A. He had palsy and he couldn't get out and he called and asked me if I would come and I did.

Q. Did you ever get any calls to come to a home of Negro citizens? A. No.

Q. If you had received such a call, would you have gone? A. Yes.

MR. STOTT: That is all the questions I have at this time.

[8] MISS GALLAGHER: Mr. Stroud, during the time you were registrar prior to 1965 when there was no more literacy test, it was your understanding wasn't it that people had to be able to read and write in order to register? A. After they did away with the literacy test, I did.

Q. I am talking about before that time. A. Oh, yes.

Q. Wasn't it your job to make sure they could read and write before you could let them register? A. Yes.

Q. That was required by the law of North Carolina, wasn't it? A. Yes.

Q. And you took an oath that you would uphold the laws of North Carolina? A. Yes.

Q. And you did your best to make sure that you did that, didn't you? A. I certainly did.

Q. Did you test every single person that came except on that first day when you said you made them read? A. As far as I remember, I did.

Q. You wanted to be sure that they could read like they were supposed to? A. Yes.

Q. If someone had asked you your policy about registering people, you would have told them that you register people just like the law required wouldn't you? A. Yes.

Q. And it would have been perfectly consistent to tell somebody that people that couldn't read and write couldn't register, isn't that right? A. Yes.

Q. People knew generally the requirements for registering when they came, didn't they? A. Yes.

[9] Q. They knew that they were going to be given some little thing to read? A. Some stayed away on that account. Wouldn't fool with it.

Q. You never made any kind of public announcement that people didn't have to be able to read and write? A. Oh, no.

Q. Because you required them to read and write until the test was suspended? A. That is right.

Q. Do you know why the test was suspended in 1965? A. I did know. Well, the civil right question, you know.

Q. You know that there was some kind of a law that superseded the North Carolina law? A. Yes, we were notified.

Q. Now, if that law didn't apply anymore and if the North Carolina law went back into effect, would you start administering the North Carolina law again? A. If I was required to do it, I would.

Q. The way you swore you would, you would uphold the laws of North Carolina? A. I would.

Q. Did you know at the time that you were administering tests that the North Carolina law required that a person had to be able to read and write any section of the North Carolina Constitution? A. Yes.

Q. And that is the way you applied the law, is that right? A. That is right.

Q. And if you were to apply the North Carolina law again, you would do that, is that right? A. Yes.

Q. During the time that you were registrar, you were authorized to register people anywhere weren't you? A. In my precinct.

[10] Q. You could go out to homes if you wanted to and you could have conducted a registration drive on your own if you wanted to, is that right? A. Yes.

Q. You could have gone from door to door? A. Yes.

Q. Did you ever call people up to remind them that they should register? A. Yes.

Q. And that was all allowed by the law, wasn't it? A. That is right.

Q. Do you know whether Negroes have always been able to get registered in Cherryville without any difficulty? A. Not to my knowing. Of course, years ago they didn't reg-

ister them, but since I have been registrar, we registered them.

Q. I am talking about the time before you were a registrar, there was some difficulty wasn't there? Negroes weren't allowed to register for a considerable period of time? A. That's right.

Q. Did you grow up in Cherryville sir? A. Well, I wasn't born in Cherryville, I was born in Cleveland County, but I have been in Cherryville practically all my life.

Q. How old were you when you came to Cherryville? A. I was about twelve years old, I guess.

Q. Did you go to high school in Cherryville? A. Oh, yes.

Q. Was it a big school? A. It wasn't too big back in 1902 or 1903.

[11] Q. That was the only school in Cherryville at the time? A. Yes.

Q. You have some friends that you went to school with from Cherryville, don't you? A. Oh, yes.

Q. And there are some of them still living in Cherryville? A. Yes.

Q. And all those people learned to read and write in school, didn't they? A. Yes, most of them did.

Q. At the time you went to school, the schools were segregated by law weren't they? There weren't any Negroes in your school? A. No ma'am.

Q. I asked two questions. I will start again. The schools were segregated is that right? A. That is right.

Q. There were no Negroes in your school? A. No.

Q. Do you know whether there was a Negro school in Cherryville when you were going to school? A. I believe they were.

Q. But you are not sure? A. I am not sure.

Q. Let me ask you this, sir. Cherryville has its own city election system doesn't it? A. Yes.

Q. Are you also a Registrar for the Cherryville city election? A. Not the city, but the school.

Q. For the school? A. Yes.

[12] Q. I see. A. Set up a new registration last April.

Q. They set up a new registration last April. Now, does the City of Cherryville have a reading and writing requirement? A. I don't believe they do.

Q. Do you school elections registration requirements include reading and writing? A. No.

Q. You testified about two white men who weren't able to read and write well enough to register the first time they tried, is that right? A. That is right.

Q. Do you know their names? A. Let's see. One was Mr. Canipe.

Q. C-a-n-i-p-e? A. That is right.

Q. How about the other one, do you remember his name? A. Clifton Jones, but he is deceased.

Q. Did Clifton Jones get registered before he died? A. No.

Q. He never came back? A. He never did come back. I asked him to, but he said he wouldn't fool with it.

Q. What about Mr. Canipe, did you ask him to come back? A. Yes.

Q. And he did and he got registered? A. That is right.

Q. And you don't know the name of the Negro man who wasn't able to read and write? A. No, I don't.

[13] Q. And so, I guess you never asked him to come back? A. No, not to my knowledge.

MISS GALLAGHER: I have no further questions.

MR. STOTT: How old are you now Mr. Stroud?

A. Just 77.

Q. Do you have some Negro friends in Cherryville around your age that you know can read and write? A. I don't remember now. There may be two or three around my age.

Q. Do you know some white people from Cherryville around your age that cannot read and write. A. I don't think of one right now.

[2]

DEPOSITION OF ELENA McCARLEY

Let The Record reflect that Mrs. Elena McCarley is a white female and is Registrar of Precinct No. 27 in Gaston County, North Carolina.

Q. Would you state your full name, please? A. Margaret Elena Wallace McCarley.

Q. Where do you live, Mrs. McCarley? A. 2006 Audrey Drive, Gastonia.

Q. Are you now serving as a Registrar in one of the precincts in Gaston County? A. Yes.

Q. And that is Precinct No. 27? A. That is right.

Q. What area does that cover? A. The lower part of Gardner Park, New Hope Acres, and a portion of New Hope Road going down to Titman Road, Neely Groves, Woolard Heights, and then Bradford Heights.

Q. How long have you been Registrar in Precinct No. 27 in Gaston County? A. Since the new registration started in 1962.

Q. Do you recall about what month in 1962 that would be? A. Let's see.

[2a] Q. About April would you say? A. It would have been April.

Q. Have you served as registrar of that Precinct since April, 1962? A. That is right.

Q. When you first became registrar of that precinct, do you know whether or not any type of test was being given to a person prior to registration for voting? A. Under the new registration?

Q. Yes. A. Well, we required them to read a portion of the oath. Maybe not all of it.

Q. What oath are you referring to? A. The registration oath and then to be able to sign their name.

Q. Did you administer this test to each person who came to register? A. Yes.

Q. After 1962 and sometime in 1964 did you start using a different type test? A. I believe it was 1964 when

we started using the printed form and letting them write a portion of the Constitution.

Q. And did you administer that to each person who came to register after that time? A. Yes, I did.

Q. Do you recall whether or not anyone, either white or Negro, was denied the right to register from 1962 to 1964 because of illiteracy? A. I did not turn down, I do not remember anybody. I had one man that came in with his wife, but he didn't try to read. He told me he could not read or write.

Q. Was that a white man or a Negro? A. A white man.

Q. Did you have anyone after you started using the written test to try to take the test and then was unable to do so and as a result of that, not allowed to register? [3] A. No, I didn't turn anybody down. I registered at the Church and I had plenty of room and when they came in, I let them sit down and take all the time they wanted on the form. Print it or whatever, just as long as they could copy it.

Q. Where was the registration or the polling place for that precinct 27? A. New Hope Baptist Church.

Q. What time of the day or night could people register in Precinct No. 27? A. At any time. They could call me at home. I would register them any time they would call and come by the house.

Q. Did you ever go to anybody's house to register voters? A. I didn't go out from door to door.

Q. Did you arrange to go to any other place to register voters other than at the Church? A. Yes, I went over to Hoffman Road School over in Bradford Heights.

Q. Where is Bradford Heights and the Hoffman Road School, where is that? A. It is in the predominantly Negro section. Bradford Heights. And the Hoffman Road School is the name of the school.

Q. Did you go at someone's request or what? A. Mr. Benson, called me and wanted to know if I would come down.

Q. Now, is Mr. Benson a Negro man? A. He is a Negro man.

Q. As a result of that call, did you go? A. I let them set the time when it would be most convenient for them and I think the first time I went, I was down there at 5:00 and stayed until after 7:00 o'clock. Most of the people come in from work from 4:00 o'clock on.

Q. You mean 5:00 o'clock in the afternoon? A. In the afternoon.

Q. Until 7:00 p.m.? A. Well, it was after seven I think when I left.

[4] Q. How many times did you do that? A. I know I went twice. The other time was one morning, I went back to get the people that didn't come in that night.

Q. Did you go to any other place? A. Not except the Church.

Q. So you went there a total of three times you say? A. Well, the last time I went was not for the County. I went with the City registrar, she wanted me to go out with her.

Q. You did not serve as City registrar did you? A. No, I just went with the City registrar.

Q. Do you recall how many you registered on those two or three occasions? A. That first time, I registered 99.

Q. Were they all Negroes? A. They were all Negroes.

Q. And did anybody attempt to register that was denied the right to register? A. No.

Q. Do you recall what type of test you were giving at that time? A. That was the first time when we first organized that precinct and we read a portion of the oath and write your name.

Q. So the oral test was being used then? A. That is right.

Q. That was before 1964 when the written test started being used? A. That is right.

Q. Did you keep the books for that precinct open for people to register at any time during the year other than twenty-one days before the election? A. I keep registra-

tion forms at home and anytime anyone wants to register; well I register them.

[5] Q. Did you ever have any calls to go to the home of someone to register a person? A. The only time I can remember going to anybody's home was right after the new registration started and I don't remember the man's name, but he was a truck driver and he was going to be out of town and he called the election office, I believe is who he called, and wanted someone to come by and register him because he was just home for a few minutes and they called me and since it is my precinct and asked me would I go register the man. That is the only time I remember. I left work and went out to register the man.

Q. Did you ever get any calls other than that one to go to somebody's home to register someone? A. No.

Q. You did not? A. I didn't go to people's home.

Q. But, did you get any calls to go? A. No.

Q. Do you know how many people are registered in Precinct No. 27? A. 874.

Q. Do you know how many of that number are Negroes? A. 217 Negroes.

Q. And how many whites? A. 657 whites.

Q. Did you ever have anyone come to register that stated to you that they were too nervous or didn't have their glasses or anything of that type that you recall? A. I have had several people that I know on occasion had this palsy condition and their hands were real shaky but they managed to try for me and I had someone who had had a stroke.

Q. Did you give the same type of test to every person that you registered? A. I did.

[6] Q. And you administered this test to the Negroes the same as you did to the whites? A. That is right.

Q. Now, since we were placed under the Voting Rights Act, you have not given any type test, is that correct? A. I don't think I registered anybody since we have been under the Act.

Q. You haven't rejected anybody have you? A. No, I

haven't. I don't think anybody has even tried to register.

MR. STOTT: Examine.

MISS GALLAGHER: Mrs. McCarley, with respect to this time that you went to the school in Bradford Heights, you testified that Mr. Benson called you up. Is Mr. Benson a Negro leader in that community? A. Yes, he is. Very nice person.

Q. He called and asked whether you would go to the school, is that right? A. I am not sure whether he called me or called the Election Office. But it is in my precinct and I was requested to go down. But I called him and we made the arrangements to suit him.

Q. He set up the time that you went down there? A. He set up the time.

Q. During the time that you were Registrar, was it your understanding that you could have gone out anywhere that you wanted to? A. Oh, yes, it was.

Q. And you could have called people up and reminded them to register if they weren't registered? A. That is right.

Q. Also, during this same period of time and before the Voting Rights Act was it your understanding that the law of North Carolina required people to be able to read and write in order to register? A. Yes.

Q. And you made everybody prove that they could read and write? A. Yes.

[7] Q. And you gave the same test to everybody? A. That is right.

Q. So, you don't think that there is anybody registered in your Precinct now who couldn't read a whole sentence, do you? A. I don't hardly think so. Sometimes, I think the people don't understand the ballot and they ask questions. But, I think they can read and write enough to vote.

Q. The third time you went down to the school, you say you went with the city registrar, is that right? A. That is right.

Q. And it was for the city election? A. Yes, it wasn't in my position as registrar. She was new out there and she wanted me to go down with her. It wasn't in my official capacity, I just went with her.

Q. This time that the truck driver called you up and you went down to his house, was that white or Negro? A. He was white.

Q. And you never got any other calls? A. No, this was just unusual circumstance. They called me at work or called the election office, I don't remember, but I did go down to this house on New Hope Road. I don't remember the people's name.

Q. You never went to a Negro house? A. No, I didn't.

MISS GALLAGHER: That is all, thank you.

MR. STOTT: Precinct No. 27, Mrs. McCarley, is outside the city limits or incorporated limits of Gastonia, isn't it? A. No, part of it is inside the city and part of it is outside.

Q. Part in and part out? A. Yes.

Q. And the portion that you mentioned Bradford Heights, you say that is a predominantly Negro section?

[8] A. That's right.

Q. Do you know whether that is inside or outside the corporate limits? A. Well, I know part of it is inside. The precinct line goes on outside the city limits, but I know part of it is inside because I went out there with the city registrar.

[2] DEPOSITION OF WILLIE DARBY

MR. STOTT: Let the record show that it is stipulated between counsel that Willie Darby is a Negro, and that according to the records kept by the Gaston County Board of Elections he registered to vote on May 5, 1962, and was registered by Charles J. Miller in Precinct No. 7.

* * * * *

Direct Examination

Q. (By Mr. Stott) Would you state your full name, please? A. Willie Darby.

Q. Where do you live, Mr. Darby? A. 1415 North Caldwell Street.

Q. That is in Gastonia, North Carolina? A. Yes, sir.

Q. That's in Gaston County, North Carolina? A. Yes, sir.

Q. How long have you lived in Gaston County? A. This is going on 13 years.

Q. Where did you live prior to coming to Gastonia? A. Smyrna, South Carolina.

Q. Smyrna, South Carolina? A. Yes, sir.

[3] Q. Had you lived in South Carolina all of that time since your birth up until 13 years ago when you came to Gastonia? A. No, sir, I lived in Winston-Salem.

Q. Were you born in Smyrna, South Carolina? A. I was born in Cherokee County.

Q. South Carolina? A. Yes, sir.

Q. What kind of work do you do now, Mr. Darby? A. Janitor at the East Baptist Church.

Q. How long have you been employed at the East Baptist Church? A. It will be two years the 29th of next month.

Q. Where did you work prior to that? A. I worked at the Allen Rest Home at Bradford Heights before I worked where I'm working at now.

Q. How old are you? A. Fifty-four.

Q. And you are registered to vote in Gaston County? A. Yes, sir.

Q. Do you recall back in 1962 when we had a complete new registration in Gaston County? A. I remember that the books was wrong, or they was getting them together or something.

Q. And you re-registered at that time? A. Yes, sir, I re-registered along about that time.

Q. Do you remember where you were when you registered? [4] A. I believe I was—I must have been living on Caldwell then or Victory one. I believe it was out on Victory.

Q. Where did you go to register? A. To the Fire Department down here.

Q. To the Fire Station on Marietta Street? A. Yes, sir.

Q. When you went to register you didn't have any trouble registering, did you? A. No.

Q. Had you ever registered to vote before? A. I hadn't

never registered until some of them was riding around and come by and picked me up and brought me there.

Q. Was that in 1962? A. I don't remember exactly what year it was.

Q. Had you ever registered to vote before the time that you went to the Fire Station to register? A. No, sir, I hadn't never voted nowhere.

Q. Had you ever been to register before that time? A. No, sir.

Q. Had you ever tried to register before that time? A. No, sir, I didn't know anything much about registering until some of them come around about registering for the Governor—

Q. The President? A. The President, or city council, or something.

[5] Q. Do you remember who came around to ask you whether you had registered or not? A. Reverend Honeycutt helped me out there—I mean this doctor—

Q. Dr. Floyd? A. Dr. Floyd, he was there when I got up there—Dr. Floyd.

Q. So he was there when you registered then? A. Yes.

Q. Now, when you were a young man, a young boy, did you have an opportunity to go to school in South Carolina? A. Yes, sir, I went to school.

Q. How far did you go in school? A. About the third grade.

Q. Third grade? A. Yes, sir.

Q. Why did you quit then, Mr. Darby? A. Farming, see back then children didn't get to go to school too much. I had to farm.

Q. This was in South Carolina? A. Yes.

Q. Are you married? A. Yes, sir.

Q. And do you have some children? A. Yes, sir, two.

Q. Are your children now grown, or what ages are they? A. The little girl, she be nine the 20th of this month. The [6] little boy will be 13 the 21st of August.

Q. Do both of them attend school? A. Yes, sir.

Q. Where do they attend school? A. The boy, he goes

to Highland High. The little girl goes to Elementary on York Street.

Q. The Elementary on York Street? A. Yes, sir.

Q. You stated that you went through the third grade? A. Yes, sir.

Q. Are you now able to read and write? A. I can't do no good reading.

Q. Can you write your name? A. I can write my name.

Q. When you went to register on May 5, 1962 at the Fire Station were you given any kind of test, or were you asked whether you could read and write or not? A. They give me some kind of little old papers and asked me could I read. I told them I could write my name, I couldn't do no good reading. I made a cross mark or something, but I wrote my name.

Q. After you did that then were you permitted to register? A. Yes, sir, went behind a little curtain and made my name.

Q. And registered? A. Yes, sir.

[7] Q. Was Reverend Honeycutt with you? A. No, sir, he wasn't behind there with me. He met me at the door. They told me how to do, you know.

Q. You voted, did you not, in the presidential election in 1962, is that correct? A. Yes, sir.

Q. And you voted in the presidential election in 1964? A. Yes, sir.

Q. Did you vote in a special election that was held in Gaston County in 1966? A. I think it was, yes, sir. I been up here two or three times, I know that.

Q. Each time that you have been to vote did you have any trouble voting? A. No, sir.

Q. When you went over to register did the registrar give you any trouble about registering? A. No, sir.

Q. Did he assist you in any way in registering? A. No, sir, he told me to go behind the curtain, and got my name and everything. I went behind the curtain.

Q. And then you came back and registered? A. Yes, sir.

MR. STOTT: I would like to introduce into evidence Plaintiff's Exhibit No. 50, which is a photostatic copy of [8] the original registration form of Willie Darby.

* * * * *

(Whereupon Plaintiff's Exhibit No. 50 was received into evidence)

Q. (By Mr. Stott) I show you now a paper writing, which is Plaintiff's Exhibit No. 50 and ask you, Mr. Darby, if that is your signature at the bottom? A. Yes, sir.

Q. You wrote that, did you? A. Yes, sir, I wrote that.

Q. And you wrote that at the time that you went to register to vote? A. Yes, sir.

Q. Do you remember that at the time that you registered it was a white man there that permitted you to register, Charles Miller? A. Yes, sir.

Q. When he asked you whether you could read what did you tell him? A. I told him I couldn't do much good reading or writing.

Q. Did he have you to write anything other than your name, Mr. Darby? A. That's all. I don't know whether I wrote my name or a cross mark.

Q. You wrote your name as appears now on Plaintiff's Exhibit No. 50? [9] A. Yes, sir.

* * * * *

Cross Examination

Q. (By Miss Gallagher) Mr, Darby, you said you are employed at the East Baptist Church, is that right? A. Yes, ma'am.

Q. What do you do there? A. Janitor.

Q. Is that a white church or a colored church? A. White.

Q. Now, you said that you were married, is that right? A. Yes, ma'am.

Q. Is your wife employed? A. Yes, ma'am.

Q. What does she do? A. She works for Mr. Huffstetler on 5th Street.

Q. What does she do for Mr. Huffstetler? A. Housemaid.

Q. And is Mr. Huffstetler a white man? A. Yes, ma'am.

Q. Your children go to the Highland High School and the Elementary School, is that right? A. Yes, ma'am.

Q. Are those colored schools? A. Yes, ma'am.

[10] Q. Now, thinking about this time that you went down to the Fire Station, they gave you something to read, is that right? A. Yes, ma'am.

Q. Did you try to read that? A. Yes, ma'am.

Q. Did you read a little bit of it? A. Yes, ma'am.

Q. You read as much of it as you could? A. Yes, ma'am.

Q. And then they registered you? A. Yes, ma'am.

Q. Can you read some? A. Not too much.

Q. Can you read a little though? A. A little.

Q. Did you learn to read what little you can read when you went to school? A. Yes, ma'am.

Q. Since you went to the third grade did you go to some more school? A. I goes to that school what they got down here where I work at. The government has got a school going on out there. I goes half a day.

Q. You go to half a day of school there?

[11] A. Yes, ma'am.

Q. And you have learned to read a little more there, haven't you? A. Yes, ma'am.

Q. Do you know Dr. Floyd? A. Yes, ma'am.

Q. Have you gone to him for dental work? A. Yes, ma'am, he pulled several "teethes" for me.

Q. Do you know Reverend Honeycutt pretty well? A. Yes, ma'am.

Q. How do you know him; A. Me and his is awfully good friends.

Q. Have you been to his church? A. Yes, ma'am.

Q. Were Dr. Floyd and Reverend Honeycutt instrumental in encouraging you to register to vote? A. Yes, ma'am.

Q. Do you sometimes read the Bible? A. Yes, ma'am.

Q. Can you read the Bible pretty well? A. Pretty good.

* * * * *

Redirect Examination

Q. (By Mr. Stott) Have you ever been mistreated by any white people since you have lived in Gaston County? [12] A. Not since I been in Gaston County.

Q. When you go to the polls to vote do you know when you go, or when you get there who you want to vote for? A. No, sir, I don't, they tells me to go behind those curtains and make a name on there. They gives me a picture of different ones on there.

Q. Do you make up your own mind who you want to vote for? A. Yes, sir.

Q. Do you have someone assist you in marking your ballot when you vote? A. Yes, sir, when I come back out some of them help me.

Q. Your wife, does she read and write, Mr. Carby? A. Yes, sir.

Q. Does she ever go with you to vote? A. She never has went with me, but some of them come around and pick her up.

Q. When you would go to vote would somebody come usually and take you to the polling place to vote? A. Yes, sir, come around in the car and pick me up.

* * * * *

Recross Examination

Q. (By Miss Gallagher) Those people who came around in the car to pick you up, were those colored people? A. Yes, ma'am.

* * * * *

[13] DEPOSITION OF
MRS. SARAH GETER CUTHBERTSON

MR. STOTT: Let the record show that Mrs. Sarah Geter Cuthbertson is a Negro Female, and was registered, according to the records kept by the Gaston County Board of Elections, on October 9, 1962, and that she was registered by Bonnie Massey in Precinct No. 7.

* * * * *

Direct Examination

Q. (By Mr. Stott) Would you state your name, please, ma'am? A. Sarah Cuthbertson.

Q. Where do you live, Mrs. Cuthbertson? A. I live at 711 West Granite.

Q. In Gastonia? A. In Gastonia.

Q. That's in Gaston County? A. Yes, in Gaston County.

Q. How long have you lived in Gastonia? A. Oh, about 30 years.

Q. How old are you now? A. I'm sixty-four.

Q. Your full name is Sarah Geter Cuthbertson, isn't it? A. Yes, sir.

Q. Are you married? A. Yes, sir, my husband died.

Q. Do you have any children? [14] A. No, I never have had no children.

Q. Are you employed anywhere now? A. No, I don't work. I'm not able to work.

Q. Do you recall back in 1962 when we had the new registration in Gaston County? You recall that, don't you? A. Yes, sir. When they first—after my husband died—he always done that, you know. I never tried to register, or vote, or anything.

Q. Until 1962? A. Until after he passed—well, they give it out at the churches and things, if you didn't have no education they had somebody to help you. So I went over to Mr. Barber first, and then went on up to the Fire Department.

Q. Now, when you say you went to Mr. Barber to help you, you mean Nathaniel Barber at the Excelsior Credit Union? A. Yes, sir, he didn't help me, there was a girl there.

Q. A girl at the place where you went to register? A. Yes, sir, then I went on up to the Fire Department.

Q. You say they announced in the church if you couldn't read and write they would help you when you went to register? A. Yes, sir, that's right.

Q. And that is why you went, is that right? A. Yes, sir.

Q. What church was it that you went to that made that announcement? [15] A. Mount Cavalry Baptist Church out at Patterson.

Q. Who was your pastor? A. Reverend Hampton.

Q. Had you ever tried to register before? A. No, sir, I never did register.

Q. Now, when you went to register you went to the Fire Station on Marietta Street? A. Yes, sir.

Q. At that time they did permit you to register? A. Yes, sir.

Q. Did anyone ask you whether you could read and write? A. No, sir, they didn't, I told them that I couldn't. They said, well, they would try to help me.

Q. This was a white lady? A. This was a colored lady, but I can't remember who they was, there was so many.

Q. But it was a colored lady that helped you? A. Yes, sir.

Q. She was there at the place you went to register? A. Yes, sir.

Q. You could write your name a little bit, is that right? A. A little, I can write Sarah, but I can't write Cuthbertson.

Q. When you went to register the registrar had you to sign a paper, didn't she? Do you remember? A. I don't remember she telling me to sign nothing.

[16] Q. Did you ever have a chance to go to school, Mrs. Cuthbertson? A. No, sir, I didn't, my daddy died when I was small. My mother had to go out to work, I had to tend to my sister. And back then I came up a pretty hard way.

Q. Did you ever get any schooling at all? A. I went a little bit. When I went I just "learnt" to write a little bit, but not to read.

Q. Did you ever finish the first grade or the second grade? A. I never finished "ary" grade.

Q. How many days would you say that you went to school in all? A. Well, I guess I went about a month, something like that.

Q. Where were you born? A. I was "borned" in Charlotte.

Q. Charlotte, North Carolina? A. Yes, sir.

MR. STOTT: I would like to offer in evidence Plaintiff's Exhibit No. 51, which is a photostatic copy of the original registration form of Sarah Geter Cuthbertson.

(Whereupon Plaintiff's Exhibit No. 51 was received into evidence.)

Q. (By Mr. Stott) I want to show you this paper writing which is Plaintiff's Exhibit No. 51, and ask you if that is where you signed your name, Mrs. Cuthbertson? A. Yes, sir, I tried to write Sarah. I wrote Sarah, but I couldn't get the Cuthbertson right.

Q. That is your writing on this Exhibit No. 51, isn't it?

[17] A. I think so.

Q. How many times did you hear Preacher Hampton state in church that if you couldn't read and write, you could go to the place to register, and somebody would help you? A. Well, I "heered" him about one time. He give it out one night.

Q. And when you heard it that one time you made up your mind to go register, didn't you? A. Yes, sir.

Q. When you went over there do you remember the name of the colored lady that helped you? A. No, sir, I don't, I don't remember her name.

Q. Do you remember that there was also a white lady where that was helping register? A. The first time I did, the white lady, but—

Q. Did the white lady help you? A. No, sir, she didn't help me.

Q. Since 1962 you have voted, haven't you?

MISS GALLAGHER: I object to the form of that.

A. Yes, sir.

Q. Have you voted since 1962? A. I just don't know, all I know I have voted and registered twice. I can't remember.

Q. Well, do you remember whether or not you voted in the election when President Johnson and Mr. Goldwater

ran? [18] A. Yes, I did, I wanted Mr. Johnson.

Q. You voted in that election? A. Yes, sir.

Q. When you went to the polls to vote did you know who you wanted to vote for? A. Yes, sir, I had in mind Mr. Johnson.

Q. Did someone help you when you went to vote for Mr. Johnson? A. That was the same thing, you know,

Q. Did somebody help you? A. Yes, sir, they helped me. Those little X's, you know, I just come down the line.

Q. And made an X mark for the person that you wanted to vote for? A. Yes, sir.

* * * * *

Cross Examination

Q. (By Miss Gallagher) Mrs. Cuthbertson, you are not working now, is that right? A. No, I don't work nowhere, I'm not able.

Q. Did you used to work? A. Yes, I used to work all the time.

Q. What did you use to do? A. I used to work in the fish camp. Then I worked daywork. I been working all my life. That is one thing why I haven't went to school.

[19] Q. When you did daywork was that for white people or colored people? A. Yes, they was white.

Q. They were all white people? A. Yes, ma'am.

Q. Did you work for Mrs. Shelton in the fish camp? A. Yes, ma'am.

Q. Is she a white lady? A. Yes, ma'am.

Q. You say your husband died a few years ago? A. Yes, ma'am

Q. Before he died was he employed? A. Yes, ma'am, he worked at Aker's Drugist.

Q. What was his job at Aker's Drugist? A. He was delivery boy, cleaned up—delivered the medicine.

Q. Now, who asked you to come down here today? A. Mr. Ramseur.

Q. Lawyer Ramseur? A. Yes, ma'am. Mr. Ramseur.

Q. Do you know him pretty well? A. I know him pretty well.

Q. Did he do some work for your husband? A. Yes, he done some work for my husband.

Q. When he came to your house to ask you to come down here, did he give you any money? [20] A. No, ma'am.

Q. Did he tell you that you had to come down here? A. No, he just asked. I told him yes, I would come, so he came after me this morning.

Q. He came after you in a car and brought you here? A. Yes, ma'am.

Q. Did he give you a piece of paper that said you had to come? A. No, he didn't give me nothing, he just told me to come down.

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[20] DEPOSITION OF LEM DAVIS, JR.

MR. STOTT: Let the record show that Mr. Lem Davis, Jr. is a Negro male, and that according to the records kept in the Gaston County Board of Elections he was registered on May 10, 1962 by Registrar Charles J. Miller in Precinct No. 7.

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Direct Examination

Q. (By Mr. Stott) Would you state your full name for us? A. Lem Davis, Jr.

Q. Where do you live, Mr. Davis? A. 316 North Pryor.

Q. In Gastonia, North Carolina? A. Yes, sir.

Q. That is in Gaston County? A. That's right.

[21] Q. How old are you, Mr. Davis? A. I'm sixty-five.

Q. Do you recall back in 1962 when we had the new registration in Gaston County—when everybody registered? A. That's right.

Q. Did you go to register so that you became registered to vote? A. That's right.

Q. Do you know whether or not you had ever registered prior to May 10, 1962, that is, register so that you could

vote? A. I think we registered down here in the Fire Department, I believe.

Q. That's the Fire Station on Marietta Street? A. Yes, sir.

Q. Do you remember how long you have been voting in Gaston County? A. Well, I tell you, the last I voted, I voted for President Roosevelt.

Q. Did you vote back at that time for President Roosevelt? A. That's right.

Q. Is that the first time you ever voted? A. Yes, I mean the first time I know anything about.

Q. That was the first time that you remember that you ever voted was for President Roosevelt? [22] A. That's right.

Q. Have you voted pretty regularly since that time? A. That's right.

Q. How long have you lived in Gaston County? A. I been here ever since 1921.

Q. Where were you born? A. McConnellsville, South Carolina.

Q. When you were a young man and a young boy did you have a chance to go to school? A. Well, I went to school I entered in the fourth grade, see. I didn't go any further.

Q. You didn't complete the fourth grade? A. No, sir, I just entered in that.

Q. Are you able to read and write now, Mr. Davis? A. Not too much.

Q. Can you write your name? A. Sure.

Q. Do you have any trouble with your vision? A. I "losed" my right eye. I can't see out of my left eye.

Q. Are you employed now? A. No, sir.

Q. How long has it been since you were able to work? A. Well, I left out of Pinkney Mills in '57, the 15th of March, with a bad heart.

Q. What date was that, what year? [23] A. Fifty-seven, the 15th of March.

Q. March 15th, 1957, you haven't worked since then?

A. I haven't done no mill work, no.

Q. Were you working at the Pinkney Mill up until '57? A. In other words, I went there—I worked there about eight years.

Q. What kind of work did you do at the Pinkney Mill? A. Bale work.

Q. Bale work? A. Yes, baling waste.

Q. Baling waste? A. Yes, in the waste house.

Q. That Pinkney Mill is a textile mill in Gastonia, isn't it? A. That's right.

Q. Had you ever worked at a textile mill prior to the time you worked at Pinkney Mill? A. No, I didn't work at no other mill—I mean, I been working in mills, see. That was my last mill job I had.

Q. Before you went to work at the Pinkney Mill did you work at some other textile mill? A. I worked in a machine shop.

Q. In whose machine shop did you work? A. Mr. Jenkins.

Q. Jenkins Metal Shop? A. Not the Metal, but the Machine Shop.

[24] Q. What Jenkins was that, if you know? A. The one up here on—

Q. Mr. Bain Jenkins? A. I guess so.

Q. How long did you work at the Machine Shop? A. I worked there six months—a little better than six months.

Q. What was your job? A. Reaming out heads.

Q. Reaming out heads? A. That's right.

Q. Did you run and operate the machines there in the machine shop? A. No, no more than reaming heads out and sweeping. The reason I left there was because they was running short of help, the work, you see. I got a job down at Pinkney Mill because Mr. Charlie Windham, he's superintendent down there, he sent for me, so I went down there. He wanted me on the morning shift, but I didn't get the word early enough, so I just worked the second shift.

Q. Mr. Charlie Windham is a white man, isn't he? A. That's right.

Q. When you went to register in 1962, do you remember whether or not the registrar asked you if you could read and write? A. That's right.

Q. Did the registrar ask you that? [25] A. That's right.

Q. What did you tell the registrar? A. I told him the same thing I told you, I can't read much.

Q. Did you tell him that you could write? A. I can't write too much.

Q. After you told him that did he let you register? A. Yes, sir.

Q. Did he give you any kind of paper to read or anything? A. He give me a paper to sign, you know.

Q. And you did sign your name to it, did you? A. Well, I made a mark; I didn't sign my name to nothing. He "writ" my name down there.

Q. I show you this paper writing which is Plaintiff's Exhibit No. 52, and ask you did you try to write your name here on this paper writing? A. Yes, that's my handwriting.

Q. Is that your handwriting? A. That's right.

Q. Since you registered have you had any trouble voting when you would go over to the place to vote? A. No, sir.

Q. When you went to vote did you know who you wanted to vote for, the man? A. That's right.

Q. Did you make up your own mind about who you wanted to vote [26] for? A. Sure.

Q. Did anybody help when you went to the polls to mark your ticket? A. No, they just showed you on the side where you wanted to vote, because I am a full-blooded democrat.

* * * * *

Cross Examination

Q. (By Mr. Kennedy) Mr. Davis, you told us that you retired from Pinkney Mill in about 1957, is that correct? A. Yes, of course, it took me a good little bit to get things straightened out, but I finally by getting me a lawyer got things straightened out.

Q. Have you had occasional jobs since that time? A. No, no more, that just piddling around.

Q. You have done some piddling? A. Just piddling around.

Q. Has most of that work been for white people? A. Well, one time I took up a job myself of getting up paper, waste paper you save and stuff like that. I took sick, so I had to quit. You know, I took a bad cold, so I had to go to the doctor. The doctor wasn't doing me go good, so I went to Dr. Baker. He said I had an enlarged heart, so now I just, you know—

Q. Well, most of those easier jobs that you have had since you [27] were sick, have they been for white people? A. Well, yes, I worked for a few white folks. I been known around here, I got a lot of good friends.

Q. Do you have a Bible, sir? A. Yes, I got one at home.

Q. Do you read it occasionally? A. Well, I can't do too much reading, like I told you. I look through it, you know, mess around.

Q. Can you read a few words in it? A. Once in a while I see something easy, I can't do too much reading, like I told you.

Q. Did somebody ask you to come down here today and testify? A. Yes, Lawyer Ramseur and a white fellow, they come down there to my house.

Q. Is Lawyer Ramseur a white person or a Negro? A. No, he's a colored man.

Q. Did you know him before he came to your house? A. Oh, sure, I been knowing him a good little bit.

Q. Did he ever do any work for you or your family? A. No, he ain't done no work for my family, but he spoke a good word for me though.

Q. Has he ever been a lawyer for you at any time? A. Well, yes, I said he spoke some good words for me.

Q. He spoke some good words for you? A. Yes, and also, my house rent man, Mr. John Grigg, and [28] different ones.

Q. When Mr. Ramseur and this other white man came down to talk to you, did they ask you to come up here, or did they tell you you had to come up here? A. No, they asked me to come, they didn't tell me I had to come.

Q. Did they give you any kind of piece of paper? A. No.

Q. Have you ever gotten a piece of paper that said you had to come up here? A. No, they just come and told me what they would like for me to do. I told them yes, I was willing to come.

Q. Did anybody ever tell you that you were entitled to get some money for coming up here and testifying? A. No, ain't nobody said nothing about no money.

Q. Did anybody ever offer to give you some money? A. No.

Q. Lawyer Ramseur didn't offer to give you some money. A. No, he told me he wanted me to come up here.

Q. How did you get up here this morning? A. I "rid" with Lawyer Ramseur.

Q. Did he pick you up in a car? A. Yes.

Q. You told us previously that you can't see out of one of your eyes. Which eye is that, sir? A. Right eye.

[29] Q. When did you lose your vision in your right eye? A. In '56.

* * * * *

Redirect Examination

Q. (By Mr. Stott) You say you have got a lot of friends among the white people? A. Sure.

Q. Have they always treated you good? A. That's right, because I know how to treat them.

Q. You treat them good? A. That's right, that's the way to get along.

Q. You say that Mr. Ramseur and a white man came and talked to you? A. That's right.

Q. Is that the white man that came with him? A. I believe so.

Q. That's Mr. Lyn Hollowell, Jr.? A. Yes, sir.

MR. STOTT: * * * I would like to offer Plaintiff's Ex-

hibit No. 52 into evidence.

(Whereupon Plaintiff's Exhibit No. 52 was received into evidence.)

DEPOSITION OF MONROE REID

MR. STOTT: Let the record show that it is stipulated between counsel that Mr. Monroe Reid is a Negro male, and was registered on 4-28-62 to vote in Gaston County in [30] Precinct No. 7.

* * * * *

Direct Examination

Q. (By Mr. Stott) Would you state your full name for us, please, sir? A. Just only Monroe Reid, I ain't got no middle name.

Q. Where do you live, Mr. Reid? A. I live now at 119 Wallace Avenue.

Q. How old are you? A. Sixty-seven the 3rd of April gone.

Q. In 1962 do you recall that at that time we had a new registration of voters in Gaston County? A. Do I know—

Q. Do you remember that in 1962? A. That we had to double back and register over again?

Q. Yes. A. Yes, sir.

Q. Had you ever registered prior to 1962, or ever voted prior to 1962? A. Did I vote in 1962;

Q. No, had you ever voted before 1962? A. 1960, I think was the time that I voted—1960.

Q. And since 1962 have you voted in the presidential elections? A. Yes, sir, I voted for President Kennedy and President [31] Johnson.

Q. When you went to vote did you have any difficulty in being permitted to vote? A. No, sir, I did not.

Q. When you were a young boy and a young man did you have an opportunity to go to school? A. I went until I finished the 7th grade.

Q. Are you able to read and write, Mr. Reid? A. I was before I lost my sight.

Q. You are blind now, is that correct? A. That's right.

Q. How long has it been since you were able to see? A. Well, this makes about the 23rd year.

Q. When you went to register in 1962 were you asked at that time whether you could read and write? A. Yes, sir.

Q. What did you tell the registrar? A. I could read and write.

Q. But at that time you had lost your vision? A. Yes, sir.

Q. When you told him you could read and write what, if anything, did he do or say? A. The ones that I was with he told them to go ahead and fix the things for me, because I couldn't see how to do it.

Q. But, were you permitted to register even though you couldn't [32] see how to do it? A. That's right.

Q. Were you asked to read anything in Braille or do anything like that? A. No, sir, I was not.

Q. Were you asked to put your X mark on the registration form? A. Well, let's see—

Q. Was somebody helping you? A. I don't know. Sometimes my mind gets pretty short, I can't think right now, but I guess they must have did so, because I had to go in there with someone. The lady told me to go in there with him, and he would have to sign my ballot for me. I guess I did put my hand on the pen.

Q. Did you have any trouble then getting registered at that time to vote? A. No, sir, I did not.

Q. When you go the the polls, or have been to the polls to vote since 1962 did someone assist you in marking your ballot? A. Yes, sir, a friend of mine, Ray Wilson.

Q. Ray Wilson would go with you? A. That's right.

Q. Is he a Negro man? A. That's right.

Q. How did you get here this morning? A. Lawyer Ramseur come and got me.

[33] Q. Did he talk with you earlier about coming up here to testify? A. No, sir, he hadn't never got in contact with me, but someone did contact me. I believe it was Tuesday.

Q. Did anyone tell you you had to come up here? A. Told me to come up here on Wednesday.

Q. Did anybody tell you that you had to come? A. No, they didn't say that I had to come.

Q. Did they ask you if you would come? A. They asked me if I would come.

Q. What did you tell them? A. I told them yes.

Q. Do you remember who it was that talked to you on Tuesday? Do you remember the names of the people that talked with you? A. Mr. Holland was one—

Q. Mr. Hollowell—was it Mr. Hollowell? A. I think that was his name.

Q. Was Mr. Stott one of them? A. That don't sound like it.

Q. What about Mr. Ramseur? A. Mr. Ramseur?

Q. Was he one of them, Mr. Earle Ramseur—Lawyer Ramseur? A. One of them sounded like Norman Brooks that was talking to me.

Q. It sounded like Norman Brooks? A. Yes, see, I have to go only by the voice, I cannot see them.

[34] Q. Do you know Lawyer Ramseur? A. Sure.

Q. Where were you born? A. I was born in Belmont, North Carolina.

Q. Where did you attend school through the 7th grade? A. Over here at Highland on York Street.

Q. When you went to school through the 7th grade is that where you learned to read and write? A. That's right.

Q. Can you still write your name if somebody points out the place for you to sign? A. Yes, I can write it. It might not be so hot, but I can write it.

* * * * *

Cross Examination

Q. (By Miss Gallagher) Mr. Reid, when you were in school when you went through the 7th grade, you learned to read and write real well, didn't you? A. Yes, ma'am, I did pretty well at that particular time.

Q. Before you lost your eyesight you could read the newspaper fine? A. I could read the newspaper, or maga-

zine, or most anything I wanted to read.

Q. Before you lost your eyesight were you employed? A. Was I what?

[35] Q. Were you employed? Did you work? A. Was I afraid I would lose it?

Q. I'm sorry. Did you used to work? A. I worked in the New Way Laundry.

Q. In the New Way Laundry, how long did you work there? A. At New Way?

Q. Yes, sir. A. Well, the first time I worked there 15 years, and the next time I went back there I worked two years. I made 17 years at the New Way Laundry. After that I was out of the New Way Laundry, and I was down at Mr. Joe Jacobs' Laundry on Franklin Avenue for two years. Then after that I left there I went to the Modern Laundry on Marietta Street for two more years. Then my eyesight began to leave me.

Q. Were all of those laundries owned by white people? A. Oh, [redacted], all of those laundries were owned by the white people.

Q. Now, since you lost your eyesight have you been getting a disability check? Have you been getting money to compensate you for that? A. I get a disability check, I reckon you might call it Social Security. They give me a little blind pension. I started off on the blind pension. Later on they begin to give me disability.

Q. You came in here carrying a white cane, didn't you? [36] A. Yes, I did.

Q. You just can't see, it's unfortunate? A. The only way I can know which direction I'm going, I know which way I'm headed, and I have to feel my way. I cannot see the way I'm going.

Q. When you went to register and somebody asked you whether you could read and write, you told them that you used to be able to read and write, didn't you? A. That's right.

Q. Did the man take you aside and ask you some questions? A. Did the man ask me some questions?

Q. Yes, sir. A. Yes, one fellow asked me about could I read and write. I told him yes. Then I went and spelled my name for him.

Q. He asked you could you spell your name, and you did it, is that right? A. He asked me how to spell Reid, and I told him.

Q. Now, is it your understanding that people who aren't blind have to be able to read and write in order to register to vote?

MR. STOTT: Objection.

A. No, I don't know about that, I'm afraid to say. But I know one thing, it would be a good thing if they could read and write.

* * * * *

Redirect Examination

Q. (By Mr. Stott) Mr. Reid, do you attend any church? A. Church?

Q. Yes. A. Yes, sure, I attend services every Sunday.

Q. What church do you attend? A. Saint Stephens AME Zion Church.

Q. Who is the pastor of that church? A. Reverend H.C. Honeycutt.

Q. Do you remember whether or not Mr. Honeycutt stated in the pulpit that you would be able to register whether you could read and write or not? A. What?

Q. That if you went up to register it didn't make any difference whether you could read and write? Do you remember whether he ever made that announcement in the pulpit or not? A. No, I don't remember whether he did or not. I don't remember hearing him say that. I know he said one thing, for the people to go and register, because it would mean something to him, everybody ought to go and register that would.

* * * * *

MR. STOTT: I want to introduce Plaintiff's Exhibit No. 53, which is a photostatic copy of the original registration form of Monroe Reid.

[38] (Whereupon Plaintiff's Exhibit No. 54 was received into evidence)

DEPOSITION OF WILL FEAMSTER

MR. STOTT: Let the record show that Mr. Will Feamster is a Negro male, and that according to the records kept by the Gaston County Board of Elections, he was registered on September 23, 1964, and that a record of his registration may be introduced later.

* * * * *

Direct Examination

Q. (By Mr. Stott) Now, would you state your name, please—full name? A. Will Feamster.

Q. Where do you live, Mr. Feamster? A. 617 North Marietta.

Q. Marietta Street in Gastonia, North Carolina? A. That's right.

Q. That is in Gaston County? A. That's in Gaston County.

Q. How long have you lived in Gaston County? A. Oh, forty years.

Q. How old are you now? A. I was born in 1910.

Q. Are you married? A. No, I been married. My wife, she's in New York.

[39] Q. You were born in 1910, is that what you said? A. That's right.

Q. Are you employed anywhere now? A. No, I don't work anywhere now. I'm handicapped on account of my eyes.

Q. Would you explain to us what your handicap is? A. Blindness.

Q. Are you able to see any? A. I can see a little bit, but not too much.

Q. Are you registered to vote in Gaston County? A. That's right.

Q. I believe that you registered in 1964; A. That's right.

Q. Had you ever registered to vote, or had you ever voted in a presidential election prior to 1964? A. Seems to me like I did, but I can't recall what President I voted for.

Q. Do you remember the first time you ever voted for a President? A. I can't recall who it was. It was someone, I don't know who it was. I think it was back in the Hoover days. I can't recall who it was.

Q. Do you recall whether or not you voted for President Hoover or President Roosevelt back at that time? A. I voted for Roosevelt, I do know that.

Q. You did? [40] A. That's right.

Q. Is that the first time that you had ever voted? A. That's the first time.

Q. When you were a young man or a young boy did you attend school any? A. I went to about the fourth grade. I went to school some when I came here. I went to night school.

Q. Had you ever attend a public school anywhere other than this night school? A. South Carolina night school.

Q. Where were you born? A. In York County, South Carolina.

Q. Did you ever attend any schools when you were a little boy? A. That's right.

Q. How far did you get in school as a little boy? A. Third grade, and when I come here I went in along about the fourth grade.

Q. In Gaston County? A. Yes, sir, Highland School.

Q. What was your reason for not being able to go to school when you were a boy? A. Back in them days when I come along they would take you out in the field and make you work. You didn't get to go to school, you had to work.

Q. Your parents made you work? [41] A. No, the white people would take you out in the field.

Q. Were you working for white people— A. No, my parents was, sure, they was sharecroppers at the time. They would tell you, "Get that boy out in the field. Get that gal out in the field. We have to have them." You do it.

Q. You did what they told you? A. That's right.

Q. How long did you live down in South Carolina? A. I left there in 1917 or '18 one.

Q. When you moved to Gaston County what did your parents do, what kind of work? A. They farmed on, my mother and them down there now.

Q. When was the first time you had a job on your own? A. Along about 1917 or '18 one.

Q. What kind of work did you start doing? A. The first work I did was down here at Spencer Lumber Company. The Lumber Company at that time was down here on Page Street. I left there and went to Southern Railroad.

Q. How long did you work at Spencer Lumber Company? A. I worked there about six months.

Q. What kind of work did you do for them? A. Handling lumber and stuff.

Q. You were a young man then? A. That's right. I left there and went to Southern Railroad in [42] 1920 or '21 one.

Q. What did you do for the Southern Railroad? A. Labor work.

Q. How long did you work for the Southern Railroad? A. Around 30 some years, I believe.

Q. Are you now a retired railroad man? A. That's right.

Q. When you went to register in 1964 were you asked whether you could read and write by the registrar? A. I don't recall that now. I believe I could write a little bit at that time, I could see. I ain't too sure. I know I could, at that time I could see.

Q. How old were you when you moved to Gaston County? A. I was around 12 or 13 years old—14, something like that.

Q. When you went to register did anybody give you a paper and ask you to read it, or ask you if you could read? A. I can't recall that. I can't remember, I'm telling you the truth. I don't know. I can't recall nothing like that now.

Q. After you moved to Gaston County did you continue to work on the farm with your mother and daddy? A. No, no.

Q. You didn't work on the farm any more? A. No.

Q. After you moved to Gaston County nobody told you then to get that boy in or out of the field? [43] A. No, them days was gone.

Q. Now, have you voted then since 1964? A. Yes, I voted back here, I don't know, last year, I believe it was.

Q. Did you vote in the presidential election when Mr. Johnson and Mr. Goldwater ran? A. That's right.

Q. Did you have any trouble getting the chance to vote? A. No, I didn't have no trouble at all—no trouble.

Q. Did you have any trouble when you went over to register? A. No, not a bit—no trouble at all.

Q. Do you remember whether it was a white man or a colored man who registered you? A. I believe it was a white lady, I ain't too sure of that.

Q. A white lady? A. I believe it was, I ain't too sure of that. It was a whole bunch of them there, several ladies —white.

Q. When you go to the polls to vote, or before you go do you make up your own mind who you want to vote for? A. That's right.

Q. Nobody tells you who to vote for, do they? A. That's right, no, no.

Q. Can you see well enough to see anything written on a piece of paper now, Mr. Feamster? A. No, not good enough.

[44] Q. But even though you were not able to read and write when you went to register in 1964 you were permitted to register, weren't you? A. That's right, supposed to the way I see it.

MR. STOTT: I would like to introduce into evidence Plaintiff's Exhibit No. 54, which is a photostatic copy of the registration form of Will Feamster.

(Whereupon Plaintiff's Exhibit No. 54 was received into evidence.)

Cross Examination

Q. (By Miss Gallagher) Mr. Feamster, after you came to Gaston County you say you went to night school some, is that right? A. That's right.

Q. Did you go to the 6th or 7th grade in night school? A. No, ma'am, about the fourth.

Q. Didn't you tell me last night that you went to the 7th grade here in night school? A. Somewhere along there, wasn't no 8th or 9th; no.

Q. Around the 7th grade? A. Something or other like that.

Q. You told me though that you learned to read and write? A. That's right.

Q. And you could read and write all right when you could see? A. That's right, I could read and write until I got handicapped along back, I believe it was '51.

[45] Q. Did someone get in touch with you about coming down here today? A. I believe Lawyer Ramseur talked to me about Monday.

Q. Did he give you a piece of paper that said you had to come here today? A. No, he didn't give me nothing that said I had to come down here.

Q. He said you had to be here? A. No, ma'am.

Q. He didn't give you anything? A. No, ma'am, he just asked me.

Q. He asked you to come here? A. Yes.

Q. Did he say anything about how you were entitled to some money for coming here? A. No, ma'am.

Q. He didn't give you any money? A. No, ma'am, he didn't give me no money.

* * * * *

Redirect Examination

Q. (By Mr. Stott) Mr. Feamster, did you come here today freely and voluntarily? A. That's right.

Q. And nobody forced you to come, did they? A. No, nobody.

[46] MR. STOTT: That's all.

A. I been living in this town when this town wasn't noth-

ing. I ain't never had no trouble here, but working, eating and sleeping.

Q. (By Mr. Stott) Let me ask him another question. You say you have never had any trouble in this town since you have lived here? A. No, no more than that shooting that I had to go to the chain gang for. That's been 40 years ago. Anything else, I ain't never had no trouble here.

* * * * *

DEPOSITION OF ALBERTA GASTON BROWN

* * * * *

Direct Examination

Q. (By Mr. Stott) Would you state your full name for us, please? A. Alberta Brown, or Alberta G. Brown is the way I signs it.

MR. STOTT: Let the record show that it is stipulated that Mrs. Alberta G. Brown is a Negro female, and that she was registered to vote in Gaston County on October 10, 1962 in Precinct No. 7.

Q. (By Mr. Stott) Where do you live, Mrs. Brown? A. Now?

Q. Yes. A 711 North Falls Street.

[47] Q. That's in Gastonia, North Carolina? A. Yes, in Gastonia, that's right.

Q. How long have you lived in Gastonia? A. Oh, I have lived here—I can't hardly tell, but I have lived here, oh, around 30 years, maybe more, just a rough guess.

Q. Where were you born? A. I was born in Reidsville, South Carolina, that's a little place out from Woodruff somewhere.

Q. How old are you now, Mrs. Brown? A. I'm seventy.

Q. Are you a widow? A. Yes, I am.

Q. Do you have any children? A. I got two girls.

Q. Do you recall back in 1962 when everybody had to re-register so they could vote? You remember that, don't you, back in 1962? A. I think I do.

Q Did you register to vote at that time? A. Yes, sir.

I did up here on Marietta Street.

Q. At the Fire Station? A. That's right.

Q. When you were a young girl or a little girl did you have an opportunity to go to school? [48] A. No, I didn't.

Q. What was the reason that you were unable to attend school? A. Well, we had a step-daddy, and was mean to us. He would make us work in the field. After the field was out he put me in the kitchen. I worked for a white lady when I was a little girl. I don't know what age, but I was very small, because I had to stand on a box to wash dishes.

Q. Did you go to school any, Mrs. Brown? A. I went to school a little, you know, maybe he would let us go to school a day or two. If there was something he wanted us to do, he would take us out. We would be out maybe a week or so.

Q. Did you complete any grade at all, any of the grades in school? A. I think I got through the first reader, such as it was. You know, I skipped days.

Q. When you went to register in 1962 were you asked whether or not you could read and write? A. I don't think so, cause I went up there with some of my neighbors, I think.

Q. Could you read and write in 1962, or can you read and write now? A. I can't read—I can read, but not to amount to nothing.

Q. Do you try to read anything? A. Sometimes I try to read the Bible, but I skip over a whole [49] lot of it. I don't understand it, 'cause I skip over a whole lot of it.

Q. I see. Can you write your name? A. Not so good.

Q. When you went to register, even though you couldn't read and write were you allowed to register? A. I was allowed to register then.

Q. Did anybody assist you in registering at that time? A. Well, I tell you, our pastor talked to us about it in church.

Q. Who is your pastor? A. Reverend Hampton.

Q. What did Reverend Hampton tell you? A. He just

said for all the members, us colored folks to go over and vote and register.

Q. Did he tell you whether or not you would be able to register even though you couldn't read and write? A. No, he didn't tell us that.

Q. But he didn't tell you that you couldn't register because you couldn't read and write, did he? A. He didn't tell us that either. He said for all of us to go.

Q. But because of that you went to register? A. That's right.

Q. Had you ever voted before that time for a President of the United States? A. I don't know, I'm scared to say it has been so long.

[50] Q. If you remember? A. I went over here to the City Hall for something one time, but I don't remember what it was.

Q. You don't know whether that was a presidential election, or just one of the city elections, do you? A. No, I can't remember, and I'm scared to say.

Q. But when you went to register in 1962 you didn't have any trouble getting registered, did you? A. No, because some of my neighbors was with me; they would tell me what to do.

Q. Have you ever worked since you lived in Gastonia? A. Oh, yes.

Q. Tell us what kind of work you did, Mrs. Brown. A. I was just a maid, servant, cook.

Q. You worked for white people? A. Oh, yes, I worked for white folks.

* * * * *

MISS GALLAGHER: I would like to mark this piece of paper for identification as Defendant's Exhibit No. 50.

CROSS-EXAMINATION

Q. (By Miss Gallagher) Mrs. Brown, I am going to show you a piece of paper, and I am going to ask you to tell me what words on this piece of paper you can read? Will you do that, please? Take all the time you want. A. Every person—like I say, I can't read it all.

[51] Q. Skip the ones you can't read. A. Every person–himself–I don't know what that is.

Q. Okay, go on. A. Shall be able to read and write–I don't know what that is–I don't know what that is–in the election year–language. That's all I can read of it.

Q. Okay, that's just fine, thank you. Now, Mrs. Brown, you said that you aren't wroking now, but that you used to work, is that right? A. Yes, I used to work. Since I got in bad health I don't work now. Of course, you know this kinds of help me.

Q. When you used to work you said you were a maid and a cook, is that right? A. That's right.

Q. Did you always work for white people all the time that you were working? A. I sure worked for white folks all the time I was working, yes.

Q. When you went to register up at the Fire Station, did you think they were going to make you read and write? A. I didn't know.

Q. Did somebody ask you to come up here today? A. Yeah, they did.

Q. Who was that, do you know? A. Lawyer Ramseur and somebody, I don't know who the gentleman was. You and some gentleman come down there.

[52] Q. That's right, we came to talk with you last night, is that right? A. Yes.

Q. When Mr. Ramseur came to talk to you did he tell you that you were going to get some money for coming today? A. He didn't tell me nothing like that.

Q. He didn't tell you that you were entitled to get some money? A. No, he didn't.

Q. Did he come and pick you up today? A. Yes.

Q. Did he give you a piece of paper that said you had to come? A. No, he didn't give me no paper at all.

* * * * *

REDIRECT EXAMINATION

Q. (By Mr. Stott) Did you come up here today freely and voluntarily, Mrs. Brown? A. Yes, I didn't mind it.

Q. You say that you have talked to this lady that has

been asking you questions? A. Yes, I talked to her last night.

Q. At your home? A. That's right.

Q. When you talked to her did she show this paper which is Defendant's Exhibit No. 50? A. Yes, I reckon that's the same paper. That's the same reading.

[53] Q. Did she ask you to read off of that paper last night? A. Yes, she did.

Q. I want to show you this paper writing which is Plaintiff's Exhibit No. 55, and ask you if that is your signature where you signed your name, Mrs. Brown? A. Is that where I signed my name?

Q. Is that where you signed your name when you went to register, here, Alberta Gaston Brown? A. I don't know whether I signed it that way or not. I thought I put Alberta Brown, I just don't remember.

MR. STOTT: I would like to introduce this as Plaintiff's Exhibit No. 55.

(Whereupon Plaintiff's Exhibit No. 55 was received into evidence.)

* * * * *

RECROSS EXAMINATION

Q. (By Miss Gallagher) Mrs. Brown, do you remember last night that the piece of paper that I showed you last night was this newspaper, and that I asked you if you could read those words in the headline right there? A. Yes, I remember.

Q. Do you remember reading those words to me? A. I read those words.

Q. Would you read those words in that headline for me? A. Now is the time for all good "mens" to "conside", I reckon.

Q. That's exactly how you read it last night, wasn't it?

[54] MR. STOTT: Objection to that.

A. That's the way I read it last night.

Q. And isn't that the only piece of paper that I showed you last night? A. This and that one.

Q. Did I show you that one too? A. You showed me one like that. I reckon that's the same paper. You showed me two.

Q. Okay, I didn't remember that. A. You showed me this and that one.

Q. Did I ask your to read this one that is marked for identification? A. Yes, the one I read just a while ago. That's the same one, ain't it?

Q. Well, you say if it is or not. A. That's the same one.

MISS GALLAGHER: I would like to mark this newspaper Defendant's Exhibit 51 and introduce it into evidence.

MR. STOTT: We object to the introduction of it, except for the portion "Now is the time for all good men to consider." Any other writing on Defendant's Exhibit 51 we object to it.

MISS GALLAGHER: The defendant is going to cut off every portion of that newspaper, except that sentence, mark it and introduce only that.

[55] (Whereupon Defendant's exhibit No. 51 was received into evidence.)

MISS GALLAGHER: I have no further questions. That is all, Mrs. Brown, thank you. I honestly did not remember showing you that piece of paper. I thought I showed you another piece of paper, but that's okay.

MRS. BROWN: Well, it had the same reading on it.

MISS GALLAGHER: Did it?

MRS. BROWN: Yes, ma'am.

MISS GALLAGHER: You are probably absolutely right, I didn't remember showing you that. I thought I showed you something else.

MRS. BROWN: You showed me that first, I believe—anyhow, you showed me two.

MISS GALLAGHER: Okay.

DEPOSITION OF BUFORD BROOKS

DIRECT EXAMINATION

Q. (By Mr. Stott) Would you state your full name, please? A. Buford Brooks.

MR. STOTT: Let the record show that it is stipulated by counsel that Buford Brooks is a Negro male, and according to the records in the office of the Board of Elections for Gaston County was registered to vote on September 23, 1964.

Q. (By Mr. Stott) Where do you live, Mr. Brooks? [56] A. 308 West Normant.

Q. And that is in Gastonia, North Carolina? A. That's right.

Q. How long have you lived in Gastonia, North Carolina? A. Oh, about thirty-three years.

Q. Are you employed anywhere now? A. No, sir.

Q. How long has it been since you worked? A. About October in '63.

Q. How old are you now, Mr. Brooks? A. Be 65 in July.

Q. What type of work did you do before 1963 when you worked? A. Cement work, I worked with Dave Perkins.

Q. Dave Perkins? A. Yes.

Q. Who is Dave Perkins? A. He's a colored fellow.

Q. You were working for him? A. That's right.

Q. When you say cement work, you mean that you laid sidewalks, driveways, and that type of thing? A. That's right.

Q. Were you a brick mason? A. No, sir, I wasn't a brick mason, I laid a few blocks.

Q. Concrete blocks? [57] A. That's right.

Q. Are you married? A. Yes, sir.

Q. Are you living with your family now? A. Yes, sir.

Q. Is your wife living? A. Yes, sir.

Q. Do you have any children? A. Got four.

Q. What are their ages, do you know? A. From 30 to 40.

Q. Do you know whether or not your four children received an education, or did they go to school? A. Yes, they went to school, they got a pretty good education.

Q. Can all four of them read and write? A. Yes, sir.

Q. Can you read and write, Mr. Brooks? A. No, sir.

Q. How far did you go in school? A. I think I went in one door and out the other one.

Q. In one door and out the other one? A. That's about the way.

Q. Where were you born? A. Cleveland County.

Q. That's in North Carolina? [58] A. That's right.

Q. When you were a little boy did you have a chance to go to school? A. No, sir.

Q. What was the reason that you were not able to go to school? A. Well, we moved from Cleveland County to York County. I was about seven when we got down there and just went to work, that's all.

Q. When you moved to York County, you mean York County, South Carolina? A. That's right.

Q. So about the time you were school age you started to work. A. Started to work, that's right.

Q. And when did you come back to Gaston County? A. Oh, about 33 years ago—'39, somewhere along there. In fact, we moved from York County back to Cherokee County. I farmed down there.

Q. Can you write your name? A. No, sir.

Q. Can you print your name? A. Yes, sir, a little bit.

Q. Did you go to register here in Gaston County some time in 1964? A. Yes, sir.

Q. And when you went to register were you asked whether you [59] could read and write? A. Yes, sir.

Q. What did you tell the registrar? A. Well, I tell you it was—got hold of a little old card—my wife had kind of taught me. I kind of got it in my head like you learn a child a speech, so I could talk it out like I was reading.

Q. Your wife helped you? A. That's right.

Q. So you talked it out enough that they let you register? A. That's right.

Q. Now, since you have registered have you been able to vote? A. One time.

Q. Do you remember when that was? A. I believe I was in the hospital last year, it must have been some time in '65. I went and I voted one time. No, I believe it was last year, I went and voted. They had a run-off two weeks later. They couldn't find my name. Before then they couldn't find it. Prior to two weeks when they had the run-off I went back, they couldn't find my name. They couldn't find my name in May.

Q. This past May? A. This past May.

Q. I want to show you this paper writing which is Plaintiff's Exhibit No. 56, and ask you is that your signature? [60] A. That's it.

Q. You signed it Buford Books, you left the R out, didn't you? A. That's right.

Q. But your name is Buford Brooks, not Books? A. That's right.

Q. Is is not B-o-o-k-s? A. That's right. I guess that's why they couldn't find it.

Q. Even though you were unable to read and write the registrar did let you register? A. That's right.

Q. Do you remember where you were when you registered? A. At Miss Earl's, I forget what street that is.

Q. At her home? A. Yes.

Q. That is Miss Malinda Earl? A. That's right.

Q. Do you remember whether or not it was a white lady or a Negro lady that registered you? A. A white lady.

Q. At the home of Mrs. Earl? A. That's right.

Q. Mrs. Malinda Earl is a Negro lady, is she not? A. That's right.

Q. It was at her home that this white lady registered you? A. That's right.

[61] MR. STOTT: I would like to introduce into evidence Plaintiff's Exhibit No. 56, which is a photostatic copy

of the registration form of Buford Brooks, and that he was registered by Mrs. Maralee Query for Precinct No. 7.

(Whereupon Plaintiff's Exhibit No. 56 was received into evidence.)

* * * * *

CROSS-EXAMINATION

Q. (By Mr. Kennedy) Mr. Brooks, you told us that when you went down to register this last time that you recited from memory the stuff that you were asked to read, is that right, for the lady? A. That's right.

Q. Is it true that you had practiced this ahead of time? A. Oh, yes.

Q. But when you went down to register the person asked you to read something, is that right? A. That's right.

Q. They asked you your name and some other things. They also asked you to read something on a piece of paper? A. That's right.

Q. And you read it to their satisfaction, is that right? A. That's right.

Q. You read most all of the words that you had memorized? A. That's right.

Q. Now, you also mentioned that there was a city council [62] election after you registered that time, the second time that they couldn't find your name, is that right? A. That's right.

Q. Were you allowed to vote that time? A No.

Q. You were not permitted to vote? A. No, couldn't find my name.

Q. Then there was a run-off two weeks later? A. No, two weeks earlier they found my name.

Q. Oh, you had voted the first time? A. That's right.

Q. In the run-off you couldn't vote? A. Couldn't find my name.

Q. They couldn't find your name? A. That's right.

Q. But you didn't vote? A. That's right.

Q. You mentioned that in May—was that this last month May of 1967? A. I believe it was.

Q. Just about a month ago? A. Yes.

Q. You went down to the voting place, is that right? A.

Q. What happened there? [63] A. They couldn't find my name.

Q. Were you allowed to vote? A. No.

Q. You couldn't vote at all? A. No.

Q. Did you tell the people that you were registered? A. Yes, sir; sure was.

Q. Did you mention the first time that you couldn't vote—did you tell the people there that you were registered? A. Yes, sir.

Q. But they still couldn't find your name? A. That's right.

Q. You spell your name B-r-o-o-k-s? There is an R in your name, isn't there? A. That's right.

Q. When you went up to register the first time at Mrs. Earl's house, did you tell the lady there your name? A. Yes, sir.

Q. You told her your name? A. Yes, sir.

Q. Did you write it down, or did she write it down? A. I done that.

Q. But did she write it down also? A. If she did I didn't see her.

Q. She asked you your name? [64] A. That's right.

Q. How did you get up to the courthouse here this morning? A. Lawyer Ramseur brought me.

Q. Is he a Negro lawyer? A. Yes, sir.

Q. His office is here in Gastonia, is that correct? A. I reckon so, I don't know.

Q. Had you talked to Lawyer Ramseur about this case, about your testimony here? A. He asked me if I would come up here, yes.

Q. Was anybody else with him? A. Mr. Stott.

Q. Are you pointing to Mr. Grady Stott? A. Yes.

Q. Did they come out to your house? A. Yes.

Q. What did you understand this case was about when they talked to you about it? A. Well, it was something to straighten out the voting.

Q. Something to straighten out the voting? A. That's right.

Q. Did they mention anything about a literacy test? A. How is that?

Q. Did they mention anything about a literacy test? A. Well, they might have did, and I didn't understand it if [65] they did.

Q. And as a result of that you came up to the courthouse here this morning? A. That's right.

Q. Were you given a piece of paper? A. No, sir.

Q. Was there a mention that you could get money—that you could be provided with some money for coming up here and testifying? A. No money involved.

Q. No money mentioned? A. No.

Q. Lawyer Ramseur or Mr. Stott didn't mention money to you? A. No, sir.

Q. Had you hear of Mr. Stott before you met him? A. Oh, yeah.

Q. How did you hear about him? A. He was the solicitor. I think he was the solicitor once I was on the jury.

Q. The solicitor is a lawyer that helps enforce the law is that right? A. Yes, sir.

* * * * *

REDIRECT EXAMINATION

Q. (By Mr. Stott) Mr. Brooks, you came up here today freely and [66] voluntarily, didn't you? A. I did.

Q. You say that you served on a jury when I was solicitor? A. Yes, sir.

Q. That was before 1961, wasn't it? A. That's right.

Q. You stated that you did talk to Mr. Ramseur and myself before coming up here today? A. That's right.

Q. Did you talk to this lady, Miss Gallagher, and Mr. Kennedy yesterday? A. No, sir.

Q. Have you talked to them at all? A. No.

Q. Did you talk to Mr. Kennedy, this gentleman here, before you came in here to testify this morning? A. He took me in another room down there.

* * * * *

RECROSS EXAMINATION

Q. (By Mr. Kennedy) Would you consider Mr. Stott an important man in Gastonia or just an ordinary fellow? A. Well as far as I know about him he's important.

Q. You have heard his name a lot? A. That's right.

Q. You have heard a lot about him? [67] A. That's right.

Q. When he comes to your house you are going to listen pretty closely to what he says, aren't you? A. Well, it's not only him, I listen close to what anybody says.

Q. That's a very good thing to do. Has Mr. Stott ever been to your house prior to that time you talked about up here today? A. No, sir.

* * * * *

RE-REDIRECT EXAMINATION

Q. (By Mr. Stott) Did anybody force you—did I tell you that you had to come up here today? A. No, that wasn't brought up.

Q. You are not afraid of me, are you, Mr. Brooks? A. Not at all.

Q. You consider me your friend, don't you? A. That's right.

* * * * *

DEPOSITION OF
[2] ELIZABETH INEZ WHITENER

DIRECT EXAMINATION

Q. (By Miss Gallagher) Miss Whitener, will you state your full name for the record, please? A. Elizabeth Inez Whitener.

Q. What is your address, please? A. 2319 Lowell Road, Gastonia.

Q. Are you presently employed by the Gaston County Board of Elections? A. Yes.

Q. What is your capacity? A. As registrar of Precinct 13.

Q. Does that precinct have a name other than Precinct 13? A. I think not.

Q. And do you receive a salary from the Gaston County Board of Elections? A. Not a salary, no.

Q. Do you receive any compensation? A. On the days that I work.

Q. On the days that you conduct registrations at the polling places? A. And on election days.

Q. And on election days. In addition to that compensation, do you also receive compensation for people that you register [3] on nonregistration days? A. Yes.

Q. Is there a fixed amount for each person that you register on nonregistration days? A. You mean fixed through the years, or at different times?

Q. At different times. A. At different times, yes.

Q. How long have you been a registrar in Gaston County? A. A few more than 20 years. I can't be exactly sure. It has been so long I can't remember when I started.

Q. You were a registrar both before and after the general re-registration in 1962? A. Yes.

Q. Directing your attention to the time before the general re-registration in 1962, could you tell me what were the requirements for registration at that time? A. We had a registration oath that was administered, and we asked the date of birth, place of residence, how long you had lived in the state and precinct, and, of course, full name.

Q. Did you give any literacy tests during the time prior to 1962? A. I don't recall.

Q. You don't remember doing anything special to determine whether a person could read and write or not? [4] A. No, I don't.

Q. Now, you remember, of course, the general re-registration in 1962? A. The loose-leaf system.

Q. At that time did you receive some instructions from the Board of Elections as to how you were to conduct the re-registration? A. I'm sure I did, I can't specifically say so, but as much as I recall I did.

Q. To the best of your recollection what instructions did you receive? A. Well, now, really I cannot be specific, because I am sure there were sheets of instructions, but I

can't recall anything exactly, except that the person was required to sign their name.

Q. Do you recall whether the person was required to read something? A. Yes.

Q. Did the Board of Elections instruct you that every person had to be asked to read something? A. Yes.

Q. When you conducted the re-registration in 1962 did you require everybody to read something? A. Yes.

Q. And to sign his name? [5] A. Yes.

Q. Did every person who came to you to register in 1962 have to be able to read that sentence in order to register? A. The oath.

Q. They had to be able to read the oath? A. Most of the words, there were some words that were rather difficult, which even some educated people stumbled over.

Q. But you required at least that they could read most of the words? A. Yes.

Q. Now, during this general re-registration in 1962 did you understand that it was your job to determine whether they could read and write well enough to register? A. Yes.

Q. And you did that to the best of your ability? A. I did, I will be honest about.

Q. You didn't let anybody register who couldn't read and write, did you? A. No.

Q. Now, at some time after the general re-registration in 1962 did you stop giving that kind of a test? A. Yes.

Q. What kind of a test did you give then? A. Nothing but the oath, but you still had to write your name.

Q. People had to write their names? [6] A. (Nods head in the affirmative)

Q. Do you remember using a form that people had to copy some sentences on? A. Yes.

Q. You used that for a while? A. Yes.

Q. Did you receive some instructions about how to use that form? A. Yes.

Q. To the best of your recollection what were those instructions? A. As well as I remember it was a sheet with three short sentences from the State of North Carolina Con-

stitution, and a person was given the choice of whichever one he could copy. That is generally the difference.

Q. Did everybody who came to register during the time that the form was in use have to complete such a form? A. That's right.

Q. And you didn't make any exceptions? A. No.

Q. Were you instructed by the Board of Elections to keep all of those forms? A. Yes.

Q. Were you instructed to keep the ones of people whether they passed or failed? A. I didn't have any forms for anybody that failed, because [7] they didn't attempt to copy it.

Q. In other words, everybody who made an attempt to copy something passed? A. (Nods head in the affirmative)

Q. And you didn't have any forms— A. I didn't have any forms that I had to disqualify anybody, no.

Q. Do you remember whether you were instructed to keep forms in case you had to disqualify somebody? A. Yes.

Q. You were so instructed? A. Yes, I think, as well as I remember.

Q. Now, during the whole time that you were registrar since 1962 did you understand that you were authorized to conduct registrations both at the polling place and in your home or elsewhere if you chose? A. Yes.

Q. You could conduct registrations any place you wanted to really, isn't that right? A. Yes.

Q. You could call people up if you wanted to remind them to register, is that right? A. Well, I am not sure, I didn't.

Q. You don't remember that you could do that? A. I don't remember, and I did not.

Q. And you didn't do that. Did you every go out to people's [8] homes? A. No.

Q. Do you remember talking to the FBI about this about a year ago? A. It hasn't been a year. I believe it was back in the spring, wasn't it, or last fall, but, anyway, yes.

Q. And they asked you some of the same questions I

am now asking you? A. Well, I didn't keep a record of the questions. I imagine it was very similar.

Q. At that time you told them the truth to the best of your knowledge? A. To the best of my knowledge, yes.

Q. And were they nice and polite to you? They didn't try to make you say anything you didn't want to say? A. No.

Q. Now, I am going to ask you whether you ever went out to anybody's home to register people? A. You mean since 1962?

Q. Yes, ma'am. A. I can't remember whether Mrs. McCarver registered or not. She was the lady who lived next door, I may have gone to her house.

Q. Do you remember whether anybody ever called you up and asked if you would come to their house? [9] A. Yes, somebody did, but let's see how long ago that has been. I can't remember how long. I remember I believe that she said her name was Harvin that called.

Q. And did you go to her house? A. No, I did not.

Q. Why was that? A. Well, it was really a favor to Mrs. McCarver, who was a very dear neighbor to go. I just didn't feel that I could go from house to house to register people. I didn't have the time, I'm sorry.

Q. I'm not accusing you of anything, I just want to find out the facts. Now, during the 1962 re-registraton at about that time were there some people who couldn't read well enough to meet your requirement of literacy? A. Yes.

Q. Were there a number of such people? A. Not too many.

Q. About how many were there? A. Less than ten, I expect.

Q. Less than ten? A. (Nods head in the affirmative)

Q. Do you remember telling the FBI that you thought there might have been as many as twenty-five, or less than twenty-five? A. No, I don't remember. Did I tell them that? It was a very small number. Now, I remember he questioned me as to number, [10] and I said "I really cannot say less than so and so." I kept no record, I cannot say.

Q. Do you remember any of those people's names? A. No.

Q. Do you remember whether they were both colored and white people? A. Mainly white.

Q. But some of them were colored people? A. There may have been a few, the majority were white.

Q. Do you know whether any of those people ever got registered thereafter or not? A. No, I don't.

Q. Did you grow up here in Gaston County? A. I have lived here since I was five years old.

Q. Did you go to school here? A. Yes.

Q. What school did you go to? A. Ranlo.

Q. Ranlo? A. Yes, Lowell, East Carolina College, Appalachian, University of North Carolina, Winthrop.

Q. My goodness! Are some of the people that you went to school with in Ranlo and Lowell still living in Gaston County? A. I think so.

Q. Do you still have some friends living here that you went to [11] school with? A. Not too many.

Q. But some? A. Most of them have moved away.

Q. At the time you went to school the schools were segregated, weren't they? A. Yes, I'm right ancient.

Q. Now, the people who were rejected, these few people that you talked about, was that during the time that there was an oral test, or was that during the time that there was a written test? A. I would say both times.

Q. During both periods of time? A. Yes.

Q. And the people who came when there was an oral test, did some of those people try to read? A. No, most of them would say, "I can't read."

Q. What would you do if they would say they couldn't read? A. I would say, "Can you read some of this to me? Can you write your name?" They would say no.

Q. Did any of those people try at all? A. No.

Q. You don't remember? A. No.

Q. So it would be your recollection that during the time of the [12] oral test everybody who tried in any way at all got registered? A. That would be my impression at this

time as well as I remember. I did have assistance in that first loose-leaf registration.

Q. Who assisted you at that time? A. Ruby Ford Jones.

Q. Is that somebody that you picked, or did the Board of Elections assign that person to help you? A. Well, I am sure they may have instructed me to get someone. As well as I remember I did ask her.

Q. That was a white lady? A. Yes.

Q. Do you know how many people there are registered to vote in your precinct? A. No, I don't

MISS GALLAGHER: I have no further questions.

CROSS-EXAMINATION

Q. (By Mr. Stott) Miss Whitener, you say that you have been registrar in Precinct No. 13 for approximately twenty years? A. Yes.

Q. What type of work do you do now? A. Well, I have been a public school teacher for years. I am a public school librarian this year.

Q. Employed by whom? A. The Charlotte-Mecklenburg Schools.

[13] Q. Have you ever refused anyone the right to register because of race or color? A. No, I have not.

Q. You were asked about some instructions that were given to you in 1962 at the time of the new registration for the loose-leaf system. At that time did you have some meetings with the Elections Board chairman to discuss the procedures that would be used in re-registration? A. Yes.

Q. Was it your understanding that at that time the type of test that would be given was an oral test, somebody to be able to read a portion of the Constitution? A. Yes.

Q. When you had someone to read, if they could read some of the words, you would permit them to register whether they could read the whole sentence or not, wouldn't you? A. Yes.

Q. I believe you testified that so far as you could remember that it would be less than ten that had been denied the right to register because of being unable to read and write since 1962? A. Well, I have no record whatsoever.

Q. Is that your opinion, if you have an opinion? A. I may be wrong in the number. This I cannot be definite about, becuase I kept no record.

[14] Q. But, anyway, then in 1964, I believe that you said you then received instructions to start using a written test, and you were given a form with three sentences from the Constitution? A. I can't recall the year, but it may have been '64, yes.

Q. But these forms were supplied to you by the Board of Elections? A. That's right.

Q. And from that time on until you were instructed not to use the test you used that written test? A. Yes.

Q. Then subsequently you were advised that no test at all would be used? A. That's right.

Q. Were you advised that you were not to use any test because of the Voting Rights Act in 1965 that Gaston County was placed under? A. That's right.

Q. And you have not used any test whatever since that time? A. Nothing except the registration oath.

Q. But you don't require them to pass any test to register? A. No, no test.

Q. The registration oath that you refer to you read that to them, and then have them to sign their name? A. Yes.

[15] Q. I believe you stated that after the written test started being used, that you never had any person who did take the test, or attempted to take the test that was denied the right to register? A. That's right.

Q. So you never had any of those forms after 1964 that somebody attempted to fill out that you refused them the right to register, did you? A. As well as I remember, no.

Q. Any person in your precinct was able to register any time during the year, except 21 days before the general election, is that correct? A. That's right.

Q. Did you register people at your home? Did people come to your home and register? A. Yes.

Q. Do you recall whether any Negro people came as well as white? A. They did, I remember a family of five at one time.

Q. Did you register all of those people at your home? A. Yes.

Q. You stated, I believe, also, that the majority of those that you were were not registered because of illiteracy were white people? A. The majority, yes.

Q. You are still acting as registrar of that precinct, aren't [16] you? A. Yes.

Q. When you had someone read a portion of the Constitution from 1962 to 1964 at the time that test was being used, you stated that maybe if some of the more difficult words they could not read you didn't consider that to be a sign of illiteracy, did you? A. No.

Q. If a person could read some of the words you decided whether in your opinion the person was of sufficient intelligence to register and vote? A. If they could read sufficient and write their name.

Q. Have you had anyone other than this one lady to asasist in the registration of voters in your precinct? A. No, I have not.

Q. Do you recall how long she did assist? Was that mainly in '62? A. I really don't remember, it was the Saturdays that we had the books open when we first began the loose-leaf registration. I just do not recall how many Saturdays it was, but it was just on Saturday.

Q. On those Saturdays would you go to the polling place? A. We were both there at the same time.

Q. Do you recall about how many Saturdays, Miss Whitener, that you went in 1962 to the polling place for the purpose of [17] registering voters? A. I do no, I cannot recall.

Q. Did you ever tell any person in your precinct not to bring people to register if they could not read and write? A. I don't recall telling them that.

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REDIRECT EXAMINATION

Q. (By Miss Gallagher) Miss Whitener, it was your general policy to require people to be able to read and write, isn't that right? A. Beginning with '62 they had to write their names on the blanks.

Q. And they had to be able to read some words? A. Yes.

Q. You never told anybody that they could register without being able to read and write? A. I did not.

Q. You never made any announcement that anybody could register without being able to read and write? A. I did not.

Q. After the Voting Rights Act did you make any such announcement? A. I did not.

Q. Now, you said when Mr. Stott asked you, I believe, that if people were able to read some of the words in the oath you [18] registered them? A. Yes.

Q. That was consistent with your understanding of the instructions from the Board of Elections, is that right? A. Yes, I tried to follow instructions.

Q. Now, you say that since the Voting Rights Act you read people the oath, and they sign their name, is that right? A. I have registered very few within the last year or so, but we used the oath.

Q. Do they still have to sign their name? A. On the registration blank.

Q. Suppose they can't sign their name? A. Then I send them uptown to the office.

Q. You still send them uptown to the office? A. Well, I wouldn't know how to deal with it.

Q. You testified that some colored people had come to your home to register, a family of five or six? A. Yes, four or five, some women came one day.

Q. Did white people also come to your home to register? A. Yes, a few.

Q. Would you say that the majority of the people who came to your home were white? A. Well, frankly, not too many have come to my home. It's rather difficult to find me at home. You are referring to since 1962?

[19] Q. Yes, ma'am. A. I would say the majority may have been white, but I cannot be sure.

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[2]

DEPOSITION OF
GENEVA BURCH

DIRECT EXAMINATION

BY MISS GALLAGHER

Q. Your full name is Geneva Burch? A. Yes.

Q. What is your address, Mrs. Burch? A. 608 East Catawba.

Q. What town is that in? A. Mt. Holly.

Q. Is that in Gaston County? A. Yes.

Q. What is your race please? Are you colored or white? A. Colored.

Q. How long have you been living in Gaston County, Mrs. Burch? A. I think I been living down in here now about 15 years. I was born in Lincoln County though.

[3] Q. When you were a little girl, did you get a chance to go to school much? A. No, didn't get to go to school much. We farmed all the time. My father was a farmer all the time. When I quite shcool I was in the fourth grade; I had to quit school.

Q. Did you learn how to write your name? A. Yes, I learned how to write my name pretty good but I ain't got no real good handwriting.

Q. But you know how to write your name? A. Yes, I know how to write my name.

Q. Did you ever try to get registered to vote in Gaston County? A. No, not with the government. I never, you know, voted for the government, nothing like that. I voted for our colored man down in the town of Mt. Holly.

Q. Did you want to vote for Mr. Hall? A. Yes but I couldn't read that little fine letters, the little small letters I couldn't read that and she told me I couldn't vote so I had to walk on out.

Q. When you wanted to vote for Mr. Hall, did you go into the place where somebody was registering people? A.

Yes, I went in the place where everybody was going in there, you know, I mean the paper she give me to read, she didn't ask me to write my name; I think she done all that writing,

[4] Q. But she asked you to read something? A. Yes, she asked me to read that paper or letter, you know, seems like I can read a little bit of it but couldn't see the letters; they was shiny, seemed like going together.

Q. You tried and could read a little? A. Yes, I tried.

Q. Did the lady or man say something? A. Wasn't any man at all? was a lady. She said—'if you can't read this, you just have to go on out' she said.

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CROSS-EXAMINATION

BY MR. STOTT

Q. You say you went to try to register to vote for a man named George Hall? A. Yes.

Q. And he was running for some office in the town of Mt. Holly? A. Yes.

Q. Was he running for mayor? A. I think so.

Q. That's the only time you've been to try to register? A. That's the only time.

Q. That was for a city election? [5] A. Yes.

Q. It wasn't for the government? A. No.

Q You didn't try to register so you could vote for the president of the United States? A. No I haven't.

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RE-DIRECT EXAMINATION

BY MISS GALLAGHER

Q. Would you like to be able to vote? A. Sure I would like to vote.

* * * * *

RE-CROSS-EXAMINATION

BY MR. STOTT:

Q. You never have been to the county board of elections office in Gastonia to try to register, have you? A. No, I haven't.

Q. And other than this one city election in Mt. Holly, you never tried to vote or register, have you? A. Never have, no.

* * * * *

DEPOSITION OF NORMA STOWE

[6]

DIRECT EXAMINATION

BY MISS GALLAGHER:

Q. Would you state your full name please? A. Norma Annette Stowe.

Q. What's your address? A. 608 East Catawba Avenue, Mt. Holly.

Q. Is that in Gaston County, N.C.? A. Yes.

Q. How old are you? A. 17.

Q. Do you go to school? A. Yes.

Q. What year are you in in school? A. This is my last year.

Q. You are a senior in high school? A. Yes.

Q. Is your grandmother Mrs. Geneva Burch? A. Yes.

Q. Do you know whether your grandmother can read and write? A. She can read a little; not the small letters.

Q. Can she write her name? A. Yes.

Q. Have you seen her write her name? A. Yes.

[7] Q. And you have seen her read a few words? A. Yes.

Q. Did you go with your grandmother when she registered to vote? A. Yes.

Q. What happened? A. She told the lady she wanted to register and the lady gave her a paper and the lady told her to read the words and she told the lady that she couldn't see the words and the lady told her if she couldn't read, she couldn't register.

Q. Did your grandmother leave then? A. Yes.

Q. Do you remember when this happened? A. I think it was the summer of '65.

Q. It was while you were in high school? A. Yes.

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CROSS-EXAMINATION

BY MR. STOTT:

Q. You went with your grandmother to register so she would be able to vote for somebody who was running for a seat on the town council in Mt. Holly? A. Yes.

[8] Q. Do you remember the name of the man she wanted to vote for? A. George Hall.

Q. What was he running for in Mt. Holly? A. I don't know.

Q. Was George Hall a Negro man? A. Yes.

Q. But you do know she wanted to try to register for the city election in Mt. Holly? A. Yes.

Q. Do you remember the name of the lady who was there at the time your grandmother went to register? A. No.

* * * * *

RE-DIRECT EXAMINATION

BY MISS GALLAGHER

Q. What is your race? A. Negro.

Q. Was the lady who told your grandmother she couldn't register because she couldn't read or write, a negro lady or a white lady? A. She was white.

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DEPOSITION OF
NELLIE RANKIN

[9] NELLIE RANKIN, having been first duly sworn testified as follows:

DIRECT EXAMINATION

BY MISS GALLAGHER:

Q. Mrs. Rankin, would you state for the record your full name? A. Nellie Rankin.

Q. Where do you live, Mrs. Rankin? A. Belmont.

Q. Do you have a street address? A. 503 Saco Street.

Q. Is Belmont in Gaston County, N.C.? A. Yes.

Q. How old are you? A. 50–65.

Q. How long have you been living in Gaston County? A. I been living in Gaston County about all my life, yes, just about all my life because I was born between Spencer Mountain and Dallas.

Q. Are you Negro or white? A. I guess I'm negro.

Q. When you were a little girl, did you get a chance to go to school very much? A. No, I didn't. My daddy started me and then he taken me out. I was so big. I wasn't particular about going to school after I was so large. I didn't get half schooling myself and I don't know nothing.

[10] Q. Did you learn how to read and write? A. A little bit; not much.

Q. Did you ever register to vote in Gaston County? A. No, I never did.

Q. Did you ever try to register to vote? A. I didn't try.

Q. Why was that?

MR. STOTT: Objection.

A. After somebody told me I had to be educated. I knowed I couldn't read or write and they's why I didn't register.

MR. STOTT: Move to strike—on the grounds it's not competent and hearsay.

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DEPOSITION OF

[10] MRS. ELIZABETH K. BEAN

DIRECT EXAMINATION

BY MISS GALLAGHER

Q. Would you state your full name for the record please? A. Mrs. Elizabeth Kinlaw Bean.

Q. What's your address, Mrs. Bean? A. 818 South Oakland Street.

Q. Is that in Gastonia? A. Gastonia.

Q. Are you presently employed by the Gaston County Board of [11] Electons in the capacity of Registrar? A. No.

Q. Were you at some time so employed? A. Yes, I was.

Q. What were the dates you were Registrar? A. In 1962 and on up to 1966.

Q. And for what precinct were you Registrar during that time? A. Precinct 11.

Q. During the time you were Registrar, did you receive some compensation from the Gaston County Board of Elections for your duties as Registrar? A. Yes.

Q. Were you paid for the official days that you were at the polling places? A. Yes.

Q. In addition to that, were you paid a certain fixed amount per person that you registered at other times? A. On our own time, yes.

Q. Now, Mrs. Bean, did you commence being a Registrar when the new books were made in 1962? A. I did.

Q. And at that time did you give some kind of literacy test in order to qualify people to register? A. I gave them that oral test.

[12] Q. Did that consist of having them read something? A. Yes.

Q. What was it that they had to read? A. There was the Constitution.

Q. Was it some short sentence they had to read? A. Short, yes.

Q. Was it your understanding that it was up to you to determine whether they could read well enough to register? A. If they could satisfy me to a certain extent.

Q. Now, did you ask everybody who came to you to try to read that same sentence? A. That's right.

Q. In convincing yourself that they could read, did you require them to read every word perfectly? A. No.

Q. What did you require? A. To try to read as much as they could.

Q. If they would give a good try and read a few words, would that satisfy you? A. That's right.

Q. Do you think there are some people who can read but who get nervous when they are asked to read in front of other people? A. There are such people but if they completely refuse, then [13] I cannot register them if they just refuse to even try.

Q. But everybody who gave a try you would register?

A. Yes, as long as they could give me a satisfactory try.

Q. Then at some time after 1962 did you stop giving a reading test? A. Yes.

Q. Do you remember about when that was? A. Around '64 I believe.

Q. What did you do then? A. We had this written test.

Q. And what did that consist of? A. I believe it had three—what would you call it—something about the North Carolina Constitution I believe.

Q. And did people have to copy that? A. They could pick out which one they wanted to copy and as long as they you know, got enough down where you could tell what it was, that was alright.

Q. That satisfied you? A. Yes.

Q. Now considering the time of the general re-registration, did you, in 1962, make some special efforts to get people registered? A. Yes.

Q. What were those efforts? [14] A. I went from door to door.

Q. In your precinct? A. Yes, that's right.

Q. Did you go throughout your precinct as best you can recall? A. Yes, as best I recall.

Q. Did you take certain streets on one day and certain streets on another day? A. Yes, because I had my map so I wouldn't get lost.

Q. Did you try as best you could to cover your whole precinct? A. That's right.

Q. Are there very many colored people living in your precinct? A. I have never seen a one. I never met a colored person in my precinct. If there are, I don't know where they're at and I lived there all my life.

Q. So in the course of going from door to door, you never had occasion to go to a colored house? A. No.

Q It was your understanding wasn't it, that you were authorized by the Gaston County Board of Elections to do this, to go from door to door and contact people? A. That's right. That was up to us if we wanted to do that.

Q. Did you also have occasion to call people up and re-

mind them that they weren't registered and they could come in and register? A. Yes, I did that.

[15] Q. Did you ever have occasion to register people in your own house? A. I only registered a few.

Q. It was your understanding during this time that you acted as Registrar, that you carried out your duties consistent with the instructions from the Board of Elections? A. That's right.

Q. You were authorized to go out from door to door and were authorized to use your discretion to determine how well people were able to read, is that right? A. That's right.

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CROSS-EXAMINATION

BY MR. STOTT:

Q. Mrs. Bean, when did you resign as Registrar in Gaston County? A. In January of 1966.

Q. Prior to that time, you had served as Registrar since 1962? A. That's right.

Q. And you were registrar when the new registration system was installed in Gaston County? A. That's right.

[16] Q. And from that time until 1964, you say your instructions were to give a literacy test which consisted of reading some portion of the Constitution of North Carolina? A. That's right.

Q. And your instructions were that if any person who came to register gave a good try and could read any part of that and you were satisfied they could read and write, you would permit that person to register? A. That's right.

Q. You have never refused to register anybody because of race or color, have you? A. No.

Q. You didn't require everybody to read perfectly every word of the test, did you? A. No.

Q. After the written test was started, did you then use that test to determine whether a person could register or not? A. Yes, we had to use that.

Q And in using that test, you didn't require a person to write every word perfectly, did you? A. No sir.

Q. If they could write part of it and also sign their name you permitted that person to register? A. That's right.

[17] Q. In your precinct you say you know of no Negro people at all? A. No sir.

Q. Have you ever had a Negro come to the polling place to register? A. No sir.

Q Upon these visits that you made from house to house, did you ever go to any Negro homes? A. No sir.

Q. Did you ever find that any Negroes were living in that precinct? A. No, sir.

Q. You didn't have any one to take the written test or try to take the test that was then refused the right to register, did you? A. Not the written test, no sir.

Q. When a person came in to take the written test, if it took any time to do so did you give that person sufficient time? A. I gave him all the time he would want.

Q. What would you do to encourage people to register in regard to taking the written test, if anything? A. Well, not really anything, because that's a right.

Q. Do you recall on one occasion that some man who stated [18] he was 98 years old, came in to register? A. That's right.

Q. What if anything did you do to assist him to register? A. He was real old, see, and he just took his time, all the time in the world but he never missed even a voting time we had; he was right there to cast his vote.

Q. That was after you permitted him to register? A. That's right.

Q. You don't recall ever having rejected anybody that came to register on the grounds of being illiterate or not being able to read or write? A. Only one.

Q. Do you recall who that was? A. No sir. That was when I was going from door to door. He couldn't read or write and wouldn't try. He said—'I can't read or write and there's no use'.

Q. Did he ever come back at a later time to try? A. No, I never seen him again.

Q. You said you went from house to house. What time of the day or night did you go to the homes of people in that precinct? A. I wasn't working. I would go in the mornings when it would be cool and I would take off in the afternoons and then sometimes I would even go at night.

[19] Q. Did this person who you say refused to even try to take the test, did he have any words with you? A. Yes, he was very mad but he understood for that matter because he couldn't read or write, he just wouldn't even try.

Q. Just what area did you cover in your precinct during this house to house canvas you made, to get people to register? A. Really, I think I covered it all.

Q. All the streets and every house? A. All the streets—I knew I did unless, you know, the people who had already come in to register; I didn't bother with that.

Q. If you went to a home that you found people not there, what did you do? A. I just went to the next door.

Q. Did you leave any word at the time? A. If there was some one there like a wife and if she wanted to register I would register her and told her if there was anybody else there old enough to register to come to the Armstrong School on Saturday or call me at my home.

Q. At the time of this new registration in 1962, did you explain to the people in your precinct why we were having this new registration? A. Yes, sir.

Q. During the time you served as Registrar in precinct 11, [20] did you ever have any complaints from anybody about being denied the right to register? A. Well, we had a complaint with the man I was telling you refused.

Q. Who did he make that complaint to? A. To me.

Q. Is that the only one you know about? A. And then a Mr. Butler.

Q. What about Mr. Butler? A. He couldn't read or write or said he couldn't and he wouldn't try but when we had this written test he came to the polling place and he sits down at the table and I explained to him, you know, he didn't have to write it all, just enough so I could see that he could write and he did; he printed it.

Q. That was in 1964? A. That's right.

Q. Did you permit him to register then? A. That's right.

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REDIRECT EXAMINATION

BY MISS GALLAGHER

Q. Both of these people, the 98 year old man and Mr. Butler, are they both white? [21] A. Yes.

Q. Mrs. Bean, to the best of your knowledge, is a place called McLean Circle in your precinct? A. I never heard of that.

Q. Is a place called East 4th Street or East 4th Avenue in your precinct? A. It wasn't in my precinct then.

Q. Do you know where old precinct 10 was—the precinct that used to be called precinct 10 was? Do you know anything about that? A. Would that be Central School?

Q. I don't know the name of it. Isn't it true that your precinct includes what used to be called precinct 11 and used to be another precinct? A. Now it does; they combined it.

Q When did they combine it? A. It was this year I imagine because it wasn't in my precinct that way when I was registrar. I only had precinct 11.

Q. That wasn't at the time of the re-registration? A. No.

RE-CROSS EXAMINATION

(Mr. Stott) Q. It was after you resigned then that some additional area or territory was added to precinct 11, wasn't it? A. That's right.

Q. And after the addition of some territory, precinct 11 to your knowledge did include some areas where Negro people lived? A. Yes, now that's right.

Q. But before that time there were no Negroes in your precinct? A. No, sir.

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DEPOSITION OF ANNE RHINE DELLINGER

DIRECT EXAMINATION

BY MISS GALLAGHER

Q. Mrs. Dellinger for the record please state your full name. A. Anne Rhine Dellinger.

Q. Where do you live, Mrs. Dellinger? A. 1504 West 3rd.

Q. Is that in Gastonia? A. Yes.

Q. Are you employed by the Gaston County Board of Elections as a Registrar? [23] A. Yes.

Q. How long have you been so employed? A. Since 1963.

Q. What precinct are you in? A. 4.

Q. Does that precinct have a name in addition to a number? A. Parkdale.

Q. At the time you commenced being a Registrar, did you administer the literacy test to people who came to register? A. At the time, yes.

Q. Was that an oral test? A. Yes.

Q. Describe the kind of test it was. What did people have to do? A. They had to read the oath and how long they had been in t e state and in the precinct.

Q. Did they also have to sign their name? A. Yes.

Q. Did you make everybody read this same oath? A. At the time, yes.

Q. Was it up to you to decide on the basis of their reading whether they could read and write well enough to be registered? A. Yes, it was up to me.

[24] Q. And did everybody have to read every word? A. No, because at the time there were some words in there that I couldn't even read.

Q. What were your standards for reading? Was it enough if they made a good try? A. Yes.

Q. Then at some time after you became Registrar, did

you then start giving a written test? A. Yes.

Q. Could you describe that test please? A. There were three different parts of the Constitution; they had to copy one part or write one part.

Q. And what were your standards for deciding whether they had written satisfactorily at that time? A. If you could make it out, reasonably so.

Q. Were your instructions to be lenient in administering the test? A. Yes.

Q. How would you describe your instructions from Mr. Hollowell? A. He said to give them every chance you possibly could.

Q. Did he say if you could make it out at all that would be alright? A. Yes.

Q. Did you make some special efforts to get people registered in your precinct? [25] A. Yes, I went from door to door and contacted them.

Q. When you went from door to door, about how many different places did you go—just roughly? A. Well maybe just one afternoon I worked say 15 or 20 and then I'd go several afternoons and work the houses.

Q. You did that several different days, going from door to door? A. Yes.

Q. Did you also sometimes call people up to remind them to register? A. Yes.

Q. All these things that you did, the special efforts you made, you were authorized by the Gaston County Board of Elections to do that? A. Yes.

Q. Did anybody ever fail to satisfy you that they could read and write sufficiently well to be registered? A. I only have recollection of one lady and when she was taking the test she sat there that day a long time. She was an elderly lady and she just couldn't write at all; just make some marks and you couldn't make anything out of it. But that's the only one I think I ever had.

Q. Do you remember talking to the F.B.I. about this? A. Yes.

[26] Q. Was the F.B.I. man that came to see you nice? A. Yes.

Q. Did he try to make you say anthing you didn't want to say? A. No.

Q. Do you remember telling him you might have rejected as many as ten people at the time you were Registrar? A. I didn't say exactly ten. I told him it could have been that number.

Q. And you still think it could have been around that number? A. I really don't know.

Q. There is only one you specifically remember? A. That lady, yes.

Q. But there might have been other people? A. No, not the written test because she was the only one that would take it that I remember.

Q. She actually tried to take it? A. Yes.

Q. But it wasn't good enough? A. She wasn't doing anything but marking on the paper. She couldn't write at all.

Q. Do you know what happened to that paper? A. I haven't any idea. That was when they were taking the written test and that's been a good long while.

Q. What about people who registered before you had the written [27] test? Did some of those fail to be able to read well enough? A. No, I think I registered every one that tried to read the thing at all. I don't remember rejecting a one.

Q. Of the ones that tried? A. Yes.

Q. Were there some that didn't try? A. Yes, and I had some that came in there that could read but still didn't try.

Q. Did you encourage them to try? A Yes, I tried to get them to.

Q. What are the requirements now for registering, if you know? A. So far as any test or anything, there's not any.

Q. Do people still sign their name? A. Yes, they sign—after I register them they sign that form.

Q. What happened if they couldn't sign their name? A. I've never run into that.

Q. What would you do now if somebody came in and couldn't sign his name? A. I'd have to find out because I don't know really.

Q. Would you register the person? A. I think I should since there's not any test or anything required, I think I should.

[29] Q. Whether he could sign his name or not? A. Well, yes. Most of them—people could write their name most of the time if they can't write much of anything else.

Q. Would you describe the incident with the man who came into you yesterday please? A. The man that came to register, that was for the city?

Q. What happened? A. He came to register and I can't register any one for the city; they have to go to the city hall. I know the man and he can't read or write, just make an X, so he was going to register uptown.

Q. Did you tell me that you didn't know whether you would have been able to register him or not? A. I'd have called to see if I could register him and I think I could have.

Q. Is he registered in the county? A. To tell you the truth, I don't know whether he came up to register or not. I just don't know. I hadn't registered him. He might have been registered beforehand or not but I don't know whether he is or not.

Q. What is his name? A. Tommy Poteat.

Q. Is he a white man? A. Yes.

[29] Q. Have you had occasion to register people in your own home? A. Yes.

Q. Would you say you registered a lot of people in your own home? A. Not a whole lot. Maybe the last day of registration it would seem like a good many people were coming in and out but it really wasn't a whole lot.

Q. About how many people altogether in the time you've been a Registrar would you say have come to your house to register? A. Well, I had 14 the last day we had an election that came over to register. That was just one day and during the year I can register them for the county any time they come and a straggler comes in there once in a while to get registered.

Q. Is it customary in your part of Gaston County for colored people to come to white people's houses socially?

MR. STOTT: Objection.

A. I haven't had any.

Q. When you were going door to door, did you go to colored families' houses? A. No, I haven't.

Q. You just haven't had occasion to do that? A. No.

[30] CROSS-EXAMINATION

BY MR. STOTT:

Q. You have nothing to do with registering people to vote in city elections, do you? A. Other than if we are at the polling place I do.

Q. The city elections? A. I am a city Registrar too.

Q. But under the city registration system, the city of Gastonia registration system, you don't register them any time during the year, do you? A. No I don't, not like I do the county. We turn our cards back in to the city.

Q. And anybody who wants to register in the city at a time other than when the books are open for registration, they have to go to city hall? A. That's right.

Q. Have you ever denied anybody the right to register because of race or color. A. No, I sure haven't.

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DEPOSITION OF
MOLLY McLEAN WILLIAMS

DIRECT EXAMINATION

BY MISS GALLAGHER

Q. Mrs. Williams, will you state for the records please, your [31] full name? A. Molly McLean Williams.

Q. Where do you live Mrs. Williams? A. Bessemer City.

Q. What's your street address? A. 813 West Virginia Avenue.

Q. How old are you, Mrs. Williams? A. About 33.

Q. And what's your race? A. Negro.

Q. What's your business, Mrs. Williams? A. Grocery. I work in a grocery store.

Q. Have you been active in encouraging people in the Bessemer City area to vote? A. I have.

Q. Are you a member of a committee that has that for a purpose? A. Right now I am.

Q. How long have you been active in encouraging people to register to vote? A. Ever since—just before President Eisenhower became president.

Q. Do you remember when Gaston County had a general re-registration and everybody had to re-register? A. Yes.

[32] Q. Was that about 1962? A. I believe it was.

Q. Do you remember re-registering at that time? A. Yes.

Q. When you went up to re-register were you asked to read a card. A. I was.

Q. You didn't have any difficulty in reading it? A. No, I didn't.

Q. What's your education? A. Eighth grade.

Q. You can read and write? A. Yes, I can.

Q. At that time or after that time, have you taken other people to register to vote? A. I have.

Q. *And have you been there when they registered?* A. Yes, I have.

Q. And have all those people been required to read in order to register? A. During this time that they had this card to read, they was.

Q. Since that time they have stopped giving a test, is that right? A. That's right.

[33] Q. During the time they were giving a test, did you ever know of anybody not having to take the test that you took up there? A. No, not to my recollection.

Q. Which people did you pick to take up there to register? A. People that I thought could read.

Q. Why did you just pick those?

MR. STOTT: Objection.

A. Well, during that time you had to read the Constitution of the United States so it was very embarrassing to have some one up there that couldn't read the Constitution and I knew that they would be turned down but here in the last four years you don't have to read the Constitution.

Q. Is it easier to get people to register now that there is no test? A. It is.

Q. What is the race of the people you have encouraged to register to vote? A. Some colored, some white.

Q. Are they mostly colored people? A. Yes.

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[34] CROSS-EXAMINATION

BY MR. STOTT:

Q. You have encouraged both whites and Negroes to register, haven't you? A. Yes.

Q. Do you run a store? A. A grocery store.

Q. Where is the store located? A. 813 West Virginia Avenue in Vantown.

Q. In Bessemer City? A. Yes.

Q. Do you have some customers who are white people? A. Yes, we have some that come by out in the country.

Q. You had no difficulty registering yourself, did you? A. No.

Q. You never had any problem in getting to vote in Bessemer City? A. No sir.

Q. In 1962 when the new registration was installed in Gaston County, you were interested enough that you tried to get as many people as you could to register? A. Yes sir.

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[35] DEPOSITION OF
WILLIAM HENRY RICE

MISS GALLAGHER: It is stipulated between the parties that the record of registration of this witness if any, will be introduced at a later date. It is further stipulated that this witness is a Negro male.

DIRECT EXAMINATION

BY MR. KENNEDY:

Q. State your name, please? A. Rice, Henry Rice.

Q. Do you have another name? A. William Henry Rice is the only name I have.

Q. Where do you live? A. Avon Street. 303 North Avon.

Q. Is that in Gastonia, N. C.? A. That's in Gastonia.

Q. How old are you? A. I am about 50.

Q. Are you registered to vote in Gaston County? A. Well, I tell you, I can't read or write.

Q. Are you registered to vote, sir? A. I don't know, I can't read.

Q. Have you ever voted? [36] A. I voted down yonder like I told you all yesterday one time and the man told me to go ahead and he didn't give me nothing but a little old paper.

Q. Just try to answer the question Mr. Rice. Do you remember when there was a re-registration in Gaston County when they made the new registration books? A. No I don't.

Q. Do you remember going to register in the past few years? A. No.

Q. Have you ever tried to register in the past few years? A. That's when I stayed on Moore Street when my first wife was living; she died.

Q. Did you try to register then? A. No, because she couldn't read and I couldn't read.

Q. Did you ever go up to the registration place and ask the Registrar? A. I went down here to the fire station and they wouldn't let me—the man told me to go ahead on, they didn't have time or something, I don't know.

Q. How much education have you had? A. I don't think I had none.

Q. Did you ever go to any school? A. I went to school like I told you all last night but I didn't learn much.

[37] Q. How far did you go in school? A. I stopped at the fourth grade.

Q. Did you go to school here in Gaston County? A. No, in Lincolnton; Oakland School. I lived there.

Q. How long ago was it that you went down to try to register? A. Way back yonder when they first opened up at the fire station.

Q. Was there a large number of people down there? A. A lot of folks was down there.

Q. Did this have anything to do with the re-registration;

of making up the new registration books? A. No, I don't think it did.

Q. Can you give me your best estimate how many years ago that was? A. I don't know how many years it was because I told you, I just don't know. When they first opened up down here. I don't know when it was that they opened up down here.

Q. Do you remember some of the people who were up there? A. Dr. Floyd.

Q. Who is Dr. Floyd? A. A tooth dentist man, and Mr. Honeycutt, he was out there.

Q. A lot of people were there? A. Yes, a lot of folks were there.

Q. Who is Mr. Honeycutt? [38] A. Sam Honeycutt is a preacher.

Q. Is he white or Negro? A. Negro.

Q. Is he well known? A. Yes.

Q. Is Dr. Floyd well known? A. Yes.

Q. After this time that you went up to the fire house, did you vote after that? A. No, I didn't go back no more because they told me to go ahead on; I didn't go back.

Q. Who told you to go ahead on? A. Some of the fellows down there. I don't know them.

Q. Were they white or Negro? A. Colored.

Q. What was the reason you went ahead on? Why did you leave at that time? A. They say they didn't have time to fool with me.

Q. Why? A. I don't know. They told me to go ahead on. That's what they told me down there.

Q. Did it have anything to do with because of your reading and writing? A. Yes, I reckon that's the cause of it because I can't read. [39] When I lived up yonder in Lincolnton they took me to Fort Bragg and I couldn't read or write down there. They had a lot of doctors down there. They had about this many papers and I couldn't even read nothing. I didn't tell the man no lies. They asked me could I read and I told them 'no'.

Q. Did you ever try to read when you were down at the fire station? A. I can't read.

Q. Did you ever try? A. I tried but I couldn't.

* * * * *

CROSS-EXAMINATION

BY MR. STOTT:

Q. You say you have voted in Gaston County? A. Down there in the fire station when they first opened up.

Q. Did you vote that time? A. Yes, they gave me a paper or something and told me to go ahead on. I couldn't read so no need putting me in there.

Q. Have you ever been into the little booth, gone behind the curtain and voted for somebody that was running for some office in an election? A. No.

Q. You never have? [40] A. Never have.

Q. You say when you went up there, there were some colored people that told you to go on, is that right? A. That's right.

Q. Do you know who it was? A. No I don't. So many were there I don't know who it was.

Q. Were there a lot of colored people there at that time? A. Yes sir.

* * * * *

REDIRECT EXAMINATION

BY MR. KENNEDY:

Q. You mentioned that you were told, when you went up to the fire house and were given a piece of paper and asked if you would read or write. Who asked you that? A. I don't know; so many people were there.

Q. Did somebody give you a piece of paper? A. Yes, sir and told me if I couldn't read, to go ahead on and I told them the truth that I couldn't read.

Q. What did this paper have to do with it? A. I don't know. They were voting there. I don't know half of the people there.

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DEPOSITION OF
[41] REVEREND T. R. HAMPTON

DIRECT EXAMINATION

BY MR. KENNEDY:

Q. State your name and address, please. A. My name is Rev. T. R. Hampton, 1407 Russell Street, Rock Hill.

Q. What is your race? A. Negro.

Q. What is your profession or occupation? A. Minister or pastor.

Q. Of what church? A. Mt. Calvary Baptist.

Q. Where is that located? A. 408 North Marietta.

Q. How long have you been pastor there? A. I been pastor there about three years since we built the new church but I been here as pastor since 1929.

Q. How often do you come here? A. Every Sunday, the first and third Sunday all day and the second and fourth Sunday in the evening.

Q. Approximately how many members do you have in your congregation? A. I have something like 450.

Q. Do all those people show up on Sunday? A. Not at one time, no.

[42] Q. Do they show up during the course of a few weeks? A. Yes.

Q. Are you registered to vote? A. Yes.

Q. Where? A. In South Carolina.

Q. Have you ever encouraged other people to register to vote? A. Yes sir.

Q. Tell us about that. A. I encourage them every time the voting privilege would come or arise and I been notified by either some of the members or through the papers or radio and I spoke from the pulpit and encouraged and emphasized the importance of going to the polls and voting. If they haven't registered, to go and register.

Q. Have you had meetings outside the church where you discussed voting registration? A. Yes, sir at this lady's house and also at the recreation center.

Q. Have you had meetings with the various civic organi-

zations? A. I have had various meetings with civic groups but few on registration.

Q. But there were some on registration? A. Some on registration. Most of my influencing people to [43] register has been from the pulpit in the church.

Q. Do you remember the re-registration of voters in Gaston County? A. Yes, sir.

Q. That occurred a few years ago? A. Yes.

Q. Was there publicity about the re-registration at that time? A. Through papers and on the radio and the people talking about it at the church.

Q. Did you attempt to help people to get ready to register? A. I did the best I could. I never did go to any place or location to assist in their registration because I was a South Carolinian and I didn't know if the law would permit me to come in and do that.

Q. Did you ever discuss these newspaper articles about re-registration in your church? A. Yes, sir, and I would carry that paper to the church and I would read it or some one else would read it and I would discuss it and emphasize the importance of all citizens to register for all Negroes to register. That was the only way to become a real citizen of this country or this city or county; you have to register and vote.

Q. Were you familiar at the re-registration time, with the requirements for re-registration? [44] A. The first requirement was that whoever was to register was to be able to read the Constitution or a part of it.

Q. Did you instruct or discuss with the membership of the church, this requirement? A. I discussed the requirement of the registration, that is the reading part of the Constitution and there were those that couldn't read and of course they didn't register because they felt—didn't attempt to register because they felt like they would be embarrassed and there were those who could read, they didn't know whether or not they were able to read that Constitution, not being familiar with it, so they didn't try.

Q. Did some of the people of your congregation and

those you talked to about registration, go up and try to register? A. Yes sir.

Q. Did some of them get registered? A. I don't know. I didn't get a report whether they did or not but because they weren't familiar with it and couldn't read it like they wanted it read, they just give it up. Whether or not they passed and were permitted to register by partial reading I am not able to say.

Q. Did you have some degree of difficulty or was it easy to encourage people? A. Difficult. Some wouldn't go at all. They say 'Oh well, the white people been running the country all the while, [45] let them run it like they want to' and they just stayed away.

Q. Did you become aware that there was a change in the voting law some time ago? A. I did.

Q. Did this change affect the reading and writing requirement? A. It changed the reading and writing requirement and all the citizens committees sent out what we all call 'workers' going from house to house to get people to register.

Q. As a result of the change in the voting law, was the reading and writing requirement dropped? A. Yes.

Q. Did a person have to read and write to get registered or not? A. He did not have to read and write.

Q. Did you still encourage people to try to register? A. I still encouraged more to get them to register.

Q. Was it easier or harder then to get people to register? A. It was easier. We got some more to register but we didn't get all of them. In fact, some of them haven't registered yet; we're still working on them.

Q. Prior to the re-registration of voters that you talked to us about, had there been a literacy test or reading and writing requirement in Gaston County? [46] A. There had been some requirement; never had been efforts made to teach them to read and write.

Q. But before the re-registration that we talked about? A. This was before. What I'm talking about is since the registration.

Q. Were you aware of any reading and writing tests for voting before the re-registration? A. No. From the time we decided that they should be instructed how to read and write so as to be able to read the Constitution or a part of it, then we set up a school to teach those who could not read and write. They turned out pretty well for a while and after a while it was dropped off.

Q. Where was this school conducted? A. Some of it was conducted at our church down here and some of it at Highland School.

Q. Is the school still going on? A. No, not now.

Q. After the change in the voting law so that people didn't have to read and write in order to register, did you or did you not talk about registration? A. I did, yes.

Q. And what did you tell your people that they had to do in order to get registered? [47] A. In order to get registered after the law was changed, I told them to go on up there and register and if they didn't understand how to go about it there would be some one there to instruct them how to register.

Q. Did you inform the members of your congregation about the fact that there was no longer any reading and writing test? A. Yes, I did.

Q. You specified that? A. I specified that.

Q. Was there ever any question about any difficulty that people might have marking their ballot if they couldn't read or write? A. After the law was stricken out of reading and writing those that had registered, if they go up there and didn't know how to fill out the ballot, there would be some one there to instruct them how to do it.

Q. Now in an earlier deposition there has been some testimony by a lady named Mrs. Cuthbertson. Do you know a lady in your church by that name? A. Yes.

Q. Do you know approximately where she lives? A. Off of North Pryor Street.

Q. Is she married? [48] A. She has been but her husband is dead.

Q. Approximately how old is she? A. She's around 50 years old more or less, in her early 50's.

Q. Do you ever remember telling her or telling a group of people in which she was present, that after the changes in the voting laws, you still had to read and write in order to register? A. No, I didn't tell that. I told her after the law was changed you did not have to read and write in order to register.

Q. Before the law was changed and during the time when you had to read and write in order to register did you tell people then you had to read and write in order to register? A. Yes, and they understood that very well.

Q. Was that also the period . . . A. That was before the change.

Q. Was that also the period in which you had this school to teach people to read and write? A. Yes, that gave rise to it.

Q. And did you also discuss the content of the newspaper articles that set out the requirement? A. Yes.

[49] Q. If there were to be a reading and writing test once more in Gaston County, do you have an opinion as to whether it would be easier or harder to get people to register?

MR. STOTT: Objection.

A. I think it would be easier to get people to register.

MR. STOTT: I withdraw the objection.

Q. Do you have an opinion as to if there was a literacy test, reading and writing test for people to register to vote, would you find it easier or harder to get people to go up to register?

MR. STOTT: Objection.

A. I think it would be easier.

Q. That it would be easier?

MR. STOTT: Objection.

A. I think it would be easier because of the past experience and they had been encouraged because of their past experience of this voting.

Q. Do you think if there was a literacy test, that it would be more people that would go up to register or fewer people?

MR. STOTT: Objection.

A. I think it would be easier because of what they heard about it and found out about it. I think they would be more willing to try.

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[50] CROSS-EXAMINATION

BY MR. STOTT:

Q. Mr. Hampton, how long have you been a minister in the Baptist Church? A. Let me see, I been a minister in the Baptist Church—I started as a minister in the Baptist Church June 1, 1918.

Q. Have you always lived in Rock Hill, S. C.? A. No, I entered the ministry in Charlotte. I moved to Rock Hlll to go to school.

Q. Where did you go to school in Rock Hill? A. Friendship College.

Q. What year did you graduate from Friendship College? A. In 1930 and in 1949 I went to Benedict College in Columbia, S. C.

Q. Did you get a degree? A. An A.B. in '51 and I went back to the Seminary that same year and came out in 1954.

Q. What Seminary did you attend? A. The Stark Seminary at Benedict College and then I went to the Baptist Seminary and attended some out there in Louisville, Ky.

Q. And you have had this church, the Calvary Baptist Church in Gastonia, for how long? A. About 38 years, March past.

Q. Have you had some white people to help you in that church? A. Yes, sir.

[51] Q. Contribute financially to your church? A. Yes, sir.

Q. I mean the church in Gastonia that you are the pastor of? A. Yes sir.

Q. And even though you were not a resident of Gaston County, have you always received good treatment from the people of this county? A. Yes sir, I have.

Q. Your members of your church are pretty faithful members, are they not? A. Yes, they are.

Q. And you have not hesitated to say in the pulpit on Sunday morning that you felt it was their opportunity, privilege and duty to register to vote in elections? A. I certainly have.

Q. And you have been encouraging the members of your church to exercise that right and privilege for many years, have you not? A. Yes, sir.

Q. Do you know Mrs. Sarah Cuthbertson? A. Yes, sir.

Q. She is a faithful member of your church? A. Yes, sir.

Q. Have you found her to be a lady of good character and [52] reputation in the community in which she lives? A. Yes, sir.

Q. And do you find her to be a woman of truth and veracity? A. Yes, sir.

Q. Do you know of your own knowledge that she cannot read and write? A. Yes sir.

Q. She testified that she was registered to vote in Gaston County in 1962, didn't she? A Yes, sir.

Q. And she also testified that in 1962, that you had encouraged the members of your church to go and register whether they could read and write or not, did you do that?

MR. KENNEDY: If he knows.

A. Yes, sir.

Q. You say that is correct? A. Yes, sir.

Q. And in 1962 you encouraged Mrs. Cuthbertson and other members of your church to go and register even though they could not read and write? A. That was after this law was changed.

Q. And you encouraged her and other members of your church through your pulpit to do that, did you not? A. I did.

[53] Q. Do you know whether or not after Mrs. Cuthbertson was registered in Gaston County in 1962 to vote, did she come to you and tell you she had been permitted to register? A. She told me.

Q. Did she tell you she had no trouble in getting registered? A. She told me that.

Q And she told you the officials at the place where she

went to register were courteous and gave her no difficulty in getting registered, didn't she? A. She did.

Q. Did you know the Rev. A. C. Honeycutt? A. Yes, sir.

Q. And do you know Mr. T. Jeffries? A. Yes, sir.

Q. Do you know Dr. Cleveland W. Floyd? A. Yes sir.

Q. And do you know Mr. Donald Earl Ramseur? A. Yes, sir.

Q. You don't know of any people or members of your congregation that have been denied the right to register in Gaston County because of race or color, do you? A. I do not.

Q. How long have you been a registered voter in Rock Hill, S.C.? [54] A. I've been a registered voter in Rock Hill, S.C. since—when Mr. Ware was the federal judge, district judge in Charleston, S.C.

Q. Do you have a church in Rock Hill? A. Yes sir.

Q. Did you encourage the members of your church in Rock Hill to register? A. Yes sir.

Q. Did you find that the members of your church in Gastonia were more receptive to your encouragement to register than those in Rock Hill? A. About the same.

Q. You're not going to put one against the other, are you? A. No.

Q. Do you find that you have more of your members of the congregation in Gaston County registered than you do in Rock Hill? A. Yes sir, we have more.

Q. How many members do you have in your church in Rock Hill? A. Around 450.

Q. About the same as you do in Gastonia? A. Not 450 in Rock Hill.

Q. How many in Rock Hill? A. About 200.

Q. Mr. Kennedy asked you whether all of these members, the [55] 450, attended church every Sunday. What was your answer? A. Not every Sunday.

Q. You have a few that will slip out once in a while? A. Once in a while. In the course of a month they would all be by.

Q. What would you say was the average attendance at your church on a Sunday? A. The average attendance in my church on Sunday is around maybe 300.

Q. Do you have any friends in Gastonia among the white people? A. Yes sir.

Q. Have you ever visited in the home of any white people in Gastonia? A. Yes sir.

Q. Do any white people visit in your home in Rock Hill, S.C.? A. Yes sir.

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REDIRECT EXAMINATION

BY MR. KENNEDY:

Q. Rev. Hampton, you told us that it was easier to get people to go by to register after there was no more reading and writing test? A. Yes.

Q. You also told us that if, in the future, you would get a [56] reading and writing test back that it would be easier than before. A. Yes, I did.

Q. Do you mean it would be easier than it was with the earlier writing and reading test? A. I mean it would be easier to get people who couldn't read and write, easier to get them to go by to attempt to register then it was before the law was changed because of their experience.

Q. Which would be the easier situation—to get the voters to go by to register with a reading and writing test or without a reading and writing test?

MR. STOTT: Objection. He's been over that.

A. It would be easier to go without the reading and writing test.

Q. Why is that?

MR. STOTT: Objection.

A. They feel like it wouldn't be any embarrassment.

Q. Do you know any people who have difficulty reading and writing—who can't read and write too good? A. I know a number of those who can't read and write at all. They can read some but can't read enough to take any kind of test of that type.

Q. During the time that the reading and writing test was required, did you ever tell Mrs. Cuthbertson or anybody [57] else that they didn't have to take a reading and writing test? A. I did what?

Q. During the time you had the reading and writing test in order to get registered, did you ever talk to Mrs. Cuthbertson or anybody else and tell them—'you don't have to take a reading and writing test'? A. No, I didn't tell them that. I didn't think that was necessary. They knew they couldn't read and knew they couldn't write and this requiremen had been reported for reading and writing by this document. They didn't attempt to go by.

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RE-CROSS-EXAMINATION

BY MR. STOTT:

Q. You know a good number of the members of your church in Gastonia who can't read and write too well who are registered to vote in this county, don't you? A. Yes sir.

Q. Do you know Nathaniel Barber? A. Yes sir.

Q. How long have you known Nathaniel Barber? A. I've known Nathaniel Barber ever since they organized this credit union.

[58] Q. Do you know of your own knowledge that he was a member of the city council in the City of Gastonia for a number of years? A. Yes sir.

Q. Do you recall how long ago he was first elected to that office? A. I don't know.

Q. Back in the 50's, wasn't it? A. Yes.

A. And then you know he did serve for a number of years and was re-elected to that office by the people of this city a number of times, don't you? A. Yes sir.

Q. And you know of your own knowledge that there was not a sufficient number of Negro voters voting for him alone to elect him to public office? A Yes sir.

Q. And you know of your own knowledge in order to get him elected and re-elected to that office, it required a

lot of white people voting for him? A. Yes sir.

Q. And you know of your own knowledge that Mr. T. Jeffries is a member of the city council of Gastonia. A. Yes sir.

[59] Q. Do you know he has served in that office for a number of years? A. Yes sir.

Q. And you know of your own knowledge that he was re-elected just this Spring to that office? A. Yes.

Q. And do you know—would you say that when he was re-elected this Spring that it took a large number of white people voting for him to re-elect him to that office? A. Yes sir.

Q. You've been familiar have you not, with the Human Relations Committee which was set up in Gastonia and Gaston County? A. Yes.

Q. And you know that Dr. C. W. Floyd has been a member of that committee for a good number of years? A. Yes, sir.

Q. Do you recall back in 1961 when the Human Relations Committee met with interested citizens of Gaston County regarding the integration of lunch counters and eating places? A. yes sir.

Q. And you know of your own knowledge that in 1961 the lunch counters, restaurants and the movies in Gaston County were integrated without any difficulty whatever, don't you? A. Yes sir.

[60] Q. And so far as you know, there have been no racial troubles in Gaston County? A. None at all.

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RE-RE-DIRECT EXAMINATION

BY MR. KENNEDY:

Q. Are you fairly familiar with the location and names of the various eating places in Gastonia? A. Yes sir.

Q. Did you know that the Coffee Cut Restaurant in Gastonia across the street from Howard Johnson's Motel was sold after the 1964 Civil Rights Act rather than desegregate? A. Yes.

Q. Do you know that? A. Yes, I heard about it.

Q. You heard it was sold rather than desegregate? A. Yes.

* * * * *

DEPOSITION OF

[2] CESLIE BROCKTON ERWIN

MR. STOTT: Let the record show that it is stipulated by counsel for the plaintiff and the defendant, that Ceslie Brockton Erwin is a Negro male and according to the records of the Gaston County Board of Elections, was registered to vote on May 8, 1962, in precinct 7.

DIRECT EXAMINATION

BY MR. STOTT:

Q. Would you state your full name please? A. Ceslie Brockton Erwin.

Q. How old are you Mr. Erwin? A. I will be 61 my birthday the 2nd of November coming.

Q. Where do you live? [3] A. 706 North Fall.

Q. That's in Gastonia, N.C.? A. Yes.

Q. And Gastonia is in Gaston County? A. Yes.

Q. Are you employed anywhere now? A. At Gastonia Textile Sheet Metal.

Q. What is your job at Gastonia Textile Sheet Metal? A. Working on card screens.

Q. Are you registered to vote in Gaston County? A. Yes.

Q. Do you recall the first time you ever voted in a presidential election for a president of the United States? A. I can't recall.

Q. Do you remember the name of the first man you voted for for president? A. I believe it was President Roosevelt; I believe that was it.

Q. Franklin D. Roosevelt? A. I believe that's right.

Q. Do you remember in 1962 when we had the new registration in Gaston County when everybody was asked to re-register in 1962? A. Yes.

[4] Q. Did you go to register at that time? A Yes.

Q. Do you recall where you went to register? A. I believe down here either at East Gastonia School or over here at this fire station 62; one or the other.

Q. When you were a young man, a young boy, did you have an opportunity to go to school any? A. Well, I did but I was sick most of the time when I was able to go to school.

Q. How much schooling did you get or how far did you go in school? A. I believe it was the fifth grade.

Q. Are you able to read and write? A. No.

Q. Can you write your name? A. I can write it, yes.

Q. How long have you been employed at the Gastonia Textile Company? A Between 27 and 28 years.

Q. Who is your employer? A Mr. Bruce Melvin.

Q And he's a white man? A. Yes.

Q. I want to show you this paper writing which is Plaintiff's [5] Exhibit 57, and ask you is that your signature down there? (Witness looks at paper) A. Yes, that's it.

MR. STOTT: We offer into evidence Plaintiff's Exhibit 57 which is a photostatic copy of the original registration form of Ceslie Brockton Erwin.

Q. Have you ever been denied the right to vote since you've lived in Gastonia? A. No.

Q. You have always been permitted to vote? A. That's right.

Q. When you went to the polls to vote, did anybody assist you? A. Me and my wife went together.

Q. And you wife can read and write? A. Yes.

Q. Do you have any children? A. One.

Q. How many children do you have? A. Just one. I had two but my oldest one died.

Q. How old is the one that is now living? A. I believe she's 30 years old now.

Q. Did she go to school? A. Yes.

Q. Did she finish high school? A. Yes.

Q. Where does she live? A. She lives with me.

Q. She went to high school in Gaston County? A. Yes.

Q. When you go to the polls to vote, you know who you want to vote for? A. That's right.

Q. And you've exercised that right to vote since you first voted for President Franklin D. Roosevelt, haven't you? A. Yes.

MR. STOTT: You may examine.

CROSS-EXAMINATION

BY MISS GALLAGHER:

Q. Mr. Erwin, you went to school through the fifth grade, you think? A. Yes.

Q. You learned how to sign your name, didn't you? A. Yes.

[7] Q. Do you sign your checks? You sign your name regularly then? A. Yes.

Q. Did you also learn how to read a little bit? A. Not much. I can spell.

Q. You can read a few words, can't you? A. A few words.

Q. When you went to register in 1962 there at the fire station on Marietta Street or at the East School, do you remember trying to read a few of the words on a piece of paper? A. When I register I always think they just ask me my name and put that down and where I live and all.

Q. You don't remember spelling a few words for them? A. No, I don't. They didn't ask me.

Q. Have you been living in the city of Gastonia the whole time you've been in Gaston County? A. Yes.

Q. Your daughter lives with you, doesn't she? A. Yes.

Q. What does she do? A. She has one or two days of work. She's got five kids and mostly takes care of them.

Q. What does she do when she's working? [8] A. She had several little jobs. She works in service when she do.

Q. Mr. Erwin, how did you come to get here today? A. Lawyer Ramseur brought me here.

Q. Did he come to talk to you about this case before? A. No, he didn't. He come over there but I wasn't at home.

Q. Did he come and bring you this morning? A. That's right.

Q. Did he tell you anything about getting money for coming here? A. No, he didn't say anything about it. He called my house two afternoons but I wasn't there so I stopped by his office yesterday to see what he was wanting, see, and then he was telling me.

Q. He didn't give you a piece of paper did he, that said you had to come here? A. No.

* * * * *

RE-DIRECT EXAMINATION

BY MR. STOTT:

Q. You came of your own free will and voluntarily? Nobody made you come, did they? A. No.

[9] Q. And you didn't mind coming up here and testifying what you told us today? A. No, that's alright.

* * * * *

DEPOSITION OF
ANNIE TATE ROBINSON

MR. STOTT: Let the record show that Annie Tate Robinson is a Negro female and was registered according to the records in the office of the Gaston County Board of Elections to vote on October 8, 1962 in precinct 7 and was registered by Larnell G. Biggers.

DIRECT EXAMINATION

BY MR. STOTT:

Q. Would you please state your full name for us? A. Annie Tate Robinson.

Q. Where do you live Mrs. Robinson? A. 212 W. Walnut.

Q. Is that in Gastonia, N.C.? A. Yes sir.

Q. How long have you lived in Gastonia? A. Ever since 1923.

[10] Q. How old are you now? A. About 50.

Q. Where were you born? A. Camden, S.C.

Q. Are you registered to vote in Gaston County? A. Yes I am.

Q. Do remember when the new registration was put into

effect in Gastonia in 1962? A. Yes sir.

Q. Had you voted in elections before 1962, Mrs. Robinson? A. I certainly did.

Q. Had you voted pretty regularly in elections up to that time? A. Yes sir.

Q. Do you remember the first time you voted in an election? A. No I don't.

Q. When you were a young girl, did you have an opportunity to go to school? A. Not much. My father died and I went to work.

Q. Did you have any schooling? A. I went to school a few years in the country.

Q. Did you complete any course at all? A. No I didn't.

Q. Are you able to read and write? A. No sir, not much.

[11] Q. Can you write your name? A. Yes.

Q. When you went to register, were you asked by Mrs. Biggers whether you could read or write? A. Yes.

Q. What did you tell her? A. I told her I couldn't read or write and then had them going to the house, you know, and I went to her house and she helped me.

Q. Mrs. Biggers did? A. Yes.

Q. Now Mrs. Larnell G. Biggers is a Negro female, is she not? A. Yes.

Q Did you go to her house at night or during the day? A. At night when I got off from work.

Q. When you did go to her house to register, you were permitted to register, weren't you? A. Yes sir.

Q. And since you registered in 1962, you have voted in the elections, haven't you? A. That's right.

Q. Have you ever been denied the right to vote in elections in Gastonia or Gaston County? A. Never have.

[12] Q. I show you this signature on this paper writing, Plaintiff's Exhibit 58 and ask you if that is your signature? (Witness looks at paper writing) A. Yes, sir that's it.

MR. STOTT: We offer into evidence Plaintiff's Exhibit 58.

Q. How long have you been able to write your name? A. About three years. Of course I could write it, but I

couldn't write it plain. After they taught me to print then I–

Q. Who taught you to print? A. Mrs. Rossell.

Q. Is that lady a friend of yours? A. Yes sir, she lives next door.

Q Are you employed now? A. Yes.

Q. Where do you work? A. For Mr. Robert Howard.

Q. Mr. Robert Howard the school principal? A. Yes.

Q. Or was a school principal? A. He's a school principal now I reckon.

Q. He works for Gaston College, doesn't he. A. Yes, sir.

MR. STOTT: Examine.

[13] CROSS-EXAMINATION

BY MISS GALLAGHER:

Q, Mrs. Robinson, what kind of work do you do? A. I do domestic work.

Q. Day work? A. Yes.

Q. Mrs. Robinson, do you remember when you went to register that Mrs. Biggers helped you to learn that sentence you had to say? A. Yes she did.

Q. Did you say it at that time? A. Yes I did.

Q. And then you got registered? A. Yes.

* * * * * *

DEPOSITION OF
MRS. VERGIE P. COSTNER

MR. STOTT: Let the record show that Mrs. Costner is a white female and is Registrar in precinct 22 in Gaston County.

DIRECT EXAMINATION

BY MR. STOTT:

Q. Would you please state your full name? A. Vergie Price Costner.

Q. Where do you live, Mrs. Costner? A. I live on Roper Road in North Belmont.

Q. How long have you been Registrar in precinct 22?

A. I think since 1961. I had one election before we had the new registration.

Q. You were acting as Registrar in that precinct then in 1962 when the new registration was started? A. Yes.

Q. During that first—the period in 1962, were you giving any kind of test, literacy test, to people who came to register? A. You know for a period, I don't know exactly how long, we had to have them read to us the oath of allegiance to the State of North Carolina and the United States and then after that we gave them a written test.

Q. Was that about 1964 you started that? A. I'm not sure about those dates.

Q. And the written test—can you explain to us what that test was? A. It was a line from the Constitution. There were about three lines, yes, not three lines, there were one, two, three, and they could choose either one of the three.

Q. And during the time you were using this oral test to read and write, do you recall having refused anybody the right to register who took the test? [15] A. No. I had three people who absolutely refused to try to take the writing test.

Q. The written test? A. Yes, and one of them got angry and he would not even try.

Q. Did you ask him to try? A. Yes.

Q Did you ever refuse anybody the right to register at the time you were using the written test? A. No.

Q. Did you ever have anybody that attempted to take the test and started to take the test, and then you refused them the right to register because they didn't complete the test? A. No. I had one Negro man who came in and he got discouraged before he had written all of the line and I encouraged him to keep on trying and he was perspiring. His wife was there and she had also registered and taken the written test. It took us about thirty minutes and I would call the words out to him and try to explain to him and he kept on and finally he finished the test.

Q. Did you permit him to register? A. I registered him.

Q. Did you have white and Negro people in the precinct where you were Registrar? A. Yes.

[16] Q. Did you ever deny any person the right to register because of race or color? A. No.

Q. During this period of 1962 and following that date, did you make any effort to go to people's homes to register them or did they come to your home? A. They came to my home and I went to their homes also.

Q. Did you go to the homes of any Negro people that you know of? A. No I didn't, but they came to my home. I only went to the homes where people requested me to come to the homes because they were unable to come to my home or out to the registry place at the school house.

Q. Do you have any opinion as to the number of Negroes who came to your home to register during 1962 and thereafter? A. There was only two. We have very few Negroes in our precinct, very few.

Q. What other things did you do in order to make it easy for people to register in precinct 22 beginning at the time of the new registration in 1962? A. I did everything I possibly could. I went to the mills and registered all three shifts. I was available for three shifts at the four mills.

Q. And during those times did you register some Negro people at the mills? [17] A. Yes. I didn't refuse to register anybody that could take the test or whatever was required of them.

Q. Did you apply this test uniformly to everybody? A. Yes.

Q. And if a person was able to read or to write to your satisfaction so far as passing the test, you permitted that person to register? A. Yes.

Q. The three people that you said refused to take the test, the written test— A. They grew angry.

Q. Were they whites or Negroes? A. Whites.

Q. Did either of the three people that you say refused to take the test, later take the test? A. No, I don't remember. Now one lady, I went back to see her after we no longer required the written test—you know there was a

period there, and she still was angry and would not take the test; she wouldn't even try.

Q. Was that a white lady? A. Yes, that was a white lady.

Q. Did you have any people or any person to come who maybe was blind or was afflicted in some way? A. Yes. One woman, she was paralyzed but she could take the [18] oral test. That was at the beginning of the registration and I registered her.

Q. Why did you register her? A. Because she couldn't use her hands.

Q. Did you know of your own knowledge that she could read and write? A. Yes.

Q. Do you know whether or not you had any person who was afflicted with blindness to come? A. No, no.

Q. I believe you were subpoenaed were you not, Mrs. Costner, to come and testify at this deposition by the government? A. Yes.

Q. And you were served with a supoena by some official of the Government? A. Yes.

Q. And then were you subsequently advised by some official of the government that it would not be necessary for you to come? A. Yes.

* * * * *

[19] CROSS-EXAMINATION

BY MISS GALLAGHER:

Q Mrs. Costner, you testified there were three people who wouldn't try to take the test so you couldn't register them. Did you encourage them to try to take the test? A. Yes.

Q. You tried every way you could to get them to make an effort, is that right? A. Yes.

Q. Did they just continue to refuse although you tried to get them to take the test? A. Yes.

Q. Do you remember the names of any of those people? A. No, I don't; I register so many people.

Q. Do you happen to know whether any of them later got registered? A. I don't think so because I was upset

when I couldn't register them. One of them just turned away and didn't say a word and it was at my home and she slammed the door going out and I haven't seen her since. I certainly remember her.

Q. Do you remember talking to the F.B.I. about this some time ago? A. Mr. Dunn.

Q. Was he nice to you? A. Very.

[20] Q. Did he try to get you to say anything that wasn't true? A. No.

Q. Do you remember telling Mr. Dunn that one of the three people who wouldn't take the test was later re-registered by you? A. Yes, and I know his name. this man came to the school house. He was not one who came to my home but came out to the school house and he cried because he could not register becaue he had been registered there before but he would not take the written test and the only thing I could do was to refuse to register him because he would not try. He wouldn't even take the pen in his hand and so later on I went to see him.. He was a Mr. Lee Lineberger and I went to see him and I registered him.

Q. Before 1962, before the general re-registration, did you give any kind of test at all? A. I didn't register one time during that period we had the old books and I had learned that book by heart in order to be able to carry on an election and just about the time I got it memorized we had a new registration.

Q. Was it your understanding during the time you were a Registrar, that you could go out to different places and register people? A. If they were not able to come to my home or the school building.

[21] Q. And you could go out for example, to the mill, and have a registration there? A. Yes, they gave me access to all the mills.

Q. So far as the Board of Elections was concerned, you were authorized to go out and conduct registrations in any place you wanted to? A. Yes.

Q. Do you remember the names of the mills you went

to? A. There are two Acme Spinning Company, one Stowe Spinning Company, Perfection Spinning Company and Linford Spinning Company.

Q. Did you register a lot of people when you were at the mills? A. Yes, you should have seen that waiting line.

Q. And, the people who tried to either read or write, depending on what the test was, got registered, is that right? A. Yes, that was when we were having the oral test, the reading of the pledge of allegiance.

Q. Is it true that some of the people couldn't read all the words but were allowed to register anyway? A. I don't remember anyone who couldn't read all of the words. You know some of them were mispronounced.

Q. Mrs. Costner, during the general re-registration in 1962, do you remember a couple of occasions on which you had to [22] sign the registration form for the person who was registering? A Yes, once in particular distinctly.

Q. Would you tell us about that please? A. I don't know whether he was scared or—well, he was just shaky, and not too long ago I registered a man who was a nervous jerk and he just—I don't think I—is that what you want to know?

Q. The one that was not too long ago, about how long ago was that? A. Let's see, I brought tht registration form into Gastonia about two weeks ago or something like that.

Q. That's the one where you signed for the man or did he sign it himself? A. Yes, I signed it for him.

Q. Other than that, can you remember signing for anybody? A. No, I remember one woman signed and you couldn't hardly read it but the judges—one of my judges happened to be the Republican judge—and he said he would accept it.

Q. Mrs. Costner, you told us about a lady who was paralyzed and couldn't write but could read alright. A. Yes, what do you want to know about her?

Q. Do you remember her name? A They live in the last house on the right below the Wellmans, what is their name—Mills.

[23] Q. Now, there may have been some other people I suppose who had physical handicaps that you were required to help. A. Could be; there were so many, you know.

Q. When there were people with physical handicaps, you could help them by signing their name, etc., couldn't you? A. Yes. I would like to know if they could read or write.

Q. Before? A. Yes.

Q. Suppose they were blind, would you register them anyway? A. If they could read or write I would have.

Q. Suppose you didn't have any way of knowing? A. I probably would have registered them. It would depend on their intelligence. You know you can usually tell.

Q. Did you usually make a notation on the card when somebody had a physical handicap? A. I tried to but we were so busy during that registration I could have some time or other not done that but if you would mention their names I believe I could remember.

Q. Emma Hall Wheeler, does that name sound familiar to you? A. No.

(Card marked for identification as Defendant's Exhibit 53)

Q. Is that your signature there, Mrs. Costner? (Witness looks at card) A. Yes it is.

[24] Q. Did you write in the corner that reason why the person couldn't sign? A. I remember, yes.

Q. What does that reason say? A. She could not write because of a stroke but could write prior to stroke. Now there was some member of her family with her and I asked her and she said yes she could prior to the stroke but she had had a stroke. She could walk but it seemed that she couldn't write.

Q. Do you remember whether she came to the polling place or to your house? A. She came to the polling place.

Q. And do you think there might have been other occasions on which you wrote things like that when people had physical disabilities? A. I may have, yes.

Q. It was your understanding that that was alright, wasn't it? A. Yes.

Q. Was it also your understanding that if you helped somebody because they had a physical disability, you could explain why you helped them and sign your name on the card and explain that? A. I tried to, yes.

Q. Mrs. Costner, are there very many colored people living in your precinct? [25] A. No, very few.

Q. Do you know how many colored people registered in your precinct? A. No, I don't.

Q. If I told you that the records of the Gaston County Board of Elections showed there were about five would that sound about right? A. About right.

Q. When you went out to the mills, were there very many colored people working there at the time? A. No.

Q. They were mostly white people, weren't they? A. Most of them were white.

Q. So you didn't have an opportunity to register a lot of colored people, did you? A. No.

Q. Everybody who came—I believe you testified that everybody who came and made a try at either reading or writing as required, was registered? A. Yes.

Q. And you remember in particular this one colored man who came with his wife and he got a little bit nervous but he stayed there and you encouraged him and finally he completed the test? A. He completed the test.

[26] Q. You don't remember any colored people who weren't ever able to complete the test? A. No.

Q. The reading test? A. No.

Q. About how many people's houses did you go to who called you up and asked you to go there? A. I don't know I don't remember.

Q. Just roughly. Would it be closer to ten or closer to one hundred? A. It would be closer to ten.

Q. Did you sometimes call up people and remind them that they hadn't registered? A. No.

Q. Could you have done that if you wanted to? A. Yes.

Q. You were authorized to do that? A. Yes.

Q. And you were authorized to use your own judgment if people could read enough or write enough to be registered?

A. The officials gave us an instruction sheet and the registration law book and said—'you are on your own. If you need any help we will be glad to help you if we can' just to settle something that I did not understand.

[27] Q. Did you read that book with the laws of North Carolina in it about registration? A. I read it but I carried that book with me.

Q. Do you remember reading in there a section that says—in order to be registered, a person has to be able to read and write any section of the North Carolina Constitution? A. I don't remember that in those words.

Q. But in any case, that wasn't your understanding that people had to be able to read or write perfectly any section you gave them? A. That's right.

Q. That was your understanding? A. Perfectly?

Q. Not perfectly, but say reasonably well, any section you gave them. A. I don't remember the word 'reasonably' just written.

Q. Before the Board of Elections gave out this written test, did you ever ask people to write anything before you got this form from the Board of Elections? A. To sign their name.

Q. Did you ever have them copy a sentence of the Constitution? A. Not until I was told to.

Q. So your judgment before the time that they gave you the forms was that all you had to know was that they could [28] read and could sign their names, is that right? A. Yes.

Q. Mrs. Costner when you went to the mills, did you make arrangements with the people at the mills to set up a registration place there? A. Yes I did because I felt I couldn't take care of all of it on Saturday.

Q. And you wanted to make it convenient for the people at the mills to register? A. Yes.

Q. And you went out there and you had a little table or something? A. They gave me access to the office. They just cleared an office for me.

* * * * *

RE-DIRECT EXAMINATION

BY MR. STOTT:

Q. Any person living in your precinct could register any time during the year except 21 days before an election, couldn't they? A. That's right, but they had to call. I didn't stay home because of that but if they called I made it a point to keep that appointment.

[29] Q. It was your understanding that a person, if they were not able to find you at home, could register any time at the election office? A. That's right.

Q. When you went to the mill to register people, or any other place, you could only register those that lived in your precinct, even though there might have been somebody at the mill working that was from another precinct, is that right? A. Yes.

Q. How far would you say North Belmont is from Gastonia, the city limits? How far from Gastonia would you say it is? A. It's about seven miles.

Q. But it is outside the city of Gastonia? A. Yes, about eight, I imagine.

Q. And two or three miles from the city of Belmont, is that right? A. Just about the same distance from North Belmont as Belmont—around eight miles.

* * * * *

RE-CROSS-EXAMINATION

BY MISS GALLAGHER:

Q. Mrs. Costner, did you say people sometimes came to your house to register? [30] A. Yes.

Q. Is it customary generally in Gaston County, for colored people to come to white people's houses except on very urgent business? A. I can't speak for anybody's home except mine and they come to our house a great many times because my husband was a policeman and they come for advice and talked with him.

Q. But as to the social customers generally, would you say colored people go to white people's homes often?

MR. STOTT: Objection.

A. I don't know. I just said I can only speak for my home, I don't know.

Q. Is it customary for white people to go to colored people's homes?

MR. STOTT: Objection.

A. I don't know. I've been in a great many colored people's homes but—I can't answer; I don't know.

* * * * * *

[Filed August 16, 1968]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GASTON COUNTY, A POLITICAL SUBDIVISION
OF THE STATE OF NORTH CAROLINA,
GASTONIA, NORTH CAROLINA,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

CIVIL ACTION
NO. 2196-66

Mr. Grady B. Stott of Gastonia, North Carolina, and Mr. Wesley E. McDonald, Sr. of Washington, D. C., for plaintiff.

Assistant Attorney General (at the time the briefs were filed) Doar and Miss Monica Gallagher and Mr. Frank E. Schwelb, Attorneys, Department of Justice, for defendant.

Before WRIGHT and ROBINSON, Circuit Judges, and GASCH, District Judge.

WRIGHT, Circuit Judge:

Gaston County, North Carolina, brought this action pursuant to Section 4(a) of the Voting Rights Act of 1965, 42 U.S.C. §§ 1973 *et seq.* (Supp. II 1965-66), seeking a declaratory judgment that, during the past five years, no "test or device" within the meaning of the Act has been used in Gaston County for the purpose or with the effect of denying or abridging the right to register to vote or to vote on account of race or color. Although several other counties and one state covered by the Act have instituted similar actions,[1] this is the first case that has proceeded to trial.

[1] *See Wake County, North Carolina v. United States*, D. D.C., Civil Action No. 1198-66 (January 23, 1967) (plaintiff's motion for summary judgment granted with consent of Government); *Elmore County, Idaho v. United States*, D. D.C., Civil Action No. 320-66 (September

Since we are thus presented with a case of first impression as to the application of what has been described as the heart of the Act, we think it desirable, if not necessary, to elaborate in some detail upon our findings, which lead us to conclude that Gaston County is not entitled to the relief requested.

I

The effect of Section 4(a) of the Voting Rights Act[2] is to suspend the use of tests or devices prescribed by state

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22, 1966) (plaintiff's motion for summary judgment granted with consent of Government); *State of Alaska v. United States*, D. D.C., Civil Action No. 101-66 (August 17, 1966) (plaintiff's motion for summary judgment granted with consent of Government); *Apache County v. United States*, D. D.C., 256 F.Supp. 903 (1966) (plaintiffs' motion for summary judgment granted with consent of Government and motion by Navajo Tribe of Indians and 31 members of Navajo Tribal Council to intervene denied).

[2]Section 4 of the Voting Rights Act, 42 U.S.C. § 1973b, provides in pertinent part as follows:

> "(a) Action by state or political subdivision for declaratory judgment of no denial or abridgement * * *.
>
> "To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color * * *.
>
> * * *
>
> "If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

[continued]

law as a prerequisite to voting or registering to vote in those states or political subdivisions thereof that are included within Section 4(b)'s coverage formula. Under Section 4(b) the Attorney General designates those states or political subdivisions that on November 1, 1964, employed as a prerequisite to voting a "test or device," which includes "any requirement that a person * * * (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class." 42 U.S.C. § 1973b (c). Also under Section 4(b) the Director of the Census certifies any state or political subdivision in which the percentage of persons registered to vote, or who did in fact vote, in the presidential election of November 1964 is less than 50 per cent of the persons of voting age residing in the relevant area. Neither the determination by the Attorney General nor that by the Director of the Census is subject to judicial review. When a state or political subdivision is certified by both the Attorney General and the Director of the Census, it is listed in the Federal Register. Suspension of any test or device in that state or political subdivision is then automatic and immediate.

A state or political subdivision with respect to which the appropriate determinations have been made may wish to

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"(b) Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register.

"The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

"A determination or certification of the Attorney General or of the Director of the Census under this section * * * shall be effective upon publication in the Federal Register."

terminate the suspension of its test or device. Accordingly, the Act provides that it may bring suit for a declaratory judgment against the United States in this court,[3] which is directed to be convened as a three-judge court. The requested relief will be granted, thereby permitting the state or subdivision to reinstate its test or device, if the court determines that no such "test or device" has been used anywhere in the territory of that state or subdivision during the five years preceding the filing of the action "for the purpose or with the effect of denying or abridging the right to vote on account of race or color." The state or subdivision bears the burden of proof, but the burden is not an unreasonable one since evidence that a state or political subdivision has engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color does not preclude reinstatement of the tests or devices if "(1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future."[4] 42 U.S.C. § 1973b(d).

Since the underlying policy and constitutionality of the Voting Rights Act of 1965 in general and Section 4 in par-

[3] The Act, however, provides that this court shall not issue a declaratory judgment favorable to a state or subdivision thereof "for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after enactment of this [Act], determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of [such] [state or subdivision thereof]." 42 U.S.C. § 1973b(a).

[4] In the event this court renders a judgment favorable to the state or subdivision, it nevertheless retains jurisdiction of the action for a period of five years and must reopen the case upon a motion by the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color. 42 U.S.C. § 1973b(a).

ticular have been sufficiently explored elsewhere,[5] a detailed account of the Act's legislative history need not be recited here. Suffice it to say that Congress conducted exhaustive hearings which established quite clearly that the evils Congress tried to eliminate by its enactment of the Civil Rights Act of 1957, 1960 and 1964 continued unabated in 1965, albeit perhaps in different forms. On the basis of these hearings, Congress concluded that the remedies it had previously provided—principally creating causes of action and authorizing standing to sue—were insufficient to rectify the situation and that it was necessary to depart from the use of the judicial process as the primary means of enforcing Fifteenth Amendment rights. Accordingly, Congress made its own findings of fact and from these findings it drew a logical inference—that is, the coexistence of low registration or voting and a test or device implied that the test or device was discriminatory in purpose or effect. Section 4(b)'s provisions defining those areas to be covered by the Act embody this presumption of discrimination.

II

Suit was filed in the present case on August 18, 1966, and the trial was held on June 21, and 22, 1967. Certain issues were disposed of by a pretrial stipulation of the parties. Thus it is uncontested that Gaston County, North Carolina, is a political subdivision of the State of North Carolina, that it is divided into 43 election precincts, and that in each precinct there is a registrar of voters who is appointed by, and an employee of, the Gaston County Board of Elections, which board is responsible for the administration of the elective processes.[6] Article VI, Section 4, of the Constitu-

[5] *South Carolina v. Katzenbach*, 383 U.S. 301 (1966). *See also* Bickel, *The Voting Rights Cases*, 1966 Sup. Ct. Rev. 79; Christopher, *The Constitutionality of the Voting Rights Act of 1965*, 18 Stan. L. Rev. 1 (1965).

[6] Registration is conducted both on the precinct level by the registrar serving in each precinct and countywide at the principal office of the Board of Elections located in the city of Gastonia.

tion of North Carolina and Section 163-28 of the North Carolina General Statutes provide that "[e]very person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina into the English language"; Section 163-28 further provides that "[i]t shall be the duty of each registrar to administer the provisions of this section." The Attorney General of the United States determined that a test or device within the meaning of Section 4(c) of the Voting Rights Act of 1965 was maintained in Gaston County on November 1, 1964. The director of the Census determined that fewer than 50 per cent of the persons of voting age residing in Gaston County voted in the presidential election of November 1964. These determinations were published in the Federal Register on March 29, 1966. 31 Fed. Reg. 5080-5081.

It is also agreed that in April 1962 the County Board of Elections, pursuant to North Carolina law, adopted a new system of voter registration known as a permanent loose-leaf system, which required a general reregistration of all voters in Gaston County. Consequently, all persons now eligible to vote have been registered during or since April 1962, so that although the relevant period for purposes of this suit would ordinarily be five years preceding the filing of the action, or from August 18, 1961, we need only concern ourselves with registration activities since April 1962. Finally, the parties have agreed that from April 1962 to the effective date of the Civil Rights Act of 1964 oral literacy tests were used by the registrars, that such tests were replaced by written tests after that date, and that since March 29, 1966, the date on which Gaston County was listed in the Federal Register, literacy tests have not been used in Gaston County.

During the course of the trial, Gaston County presented six witnesses and the depositions of 13 additional witnesses, and introduced into evidence numerous exhibits. The thrust of the accumulated evidence was to show the impartial implementation of the new registration system. Thus there

is credible evidence to establish that in April 1962 the number of voting precincts was increased for the convenience of the voters from 35 to 43; that the registration books have been kept open at the principal office of the County Board of Elections from 8:30 A.M. to 5:00 P.M., Monday through Friday[7]; and that registrars have been authorized—indeed encouraged[8]—to be available to register any qualified person at any reasonable hour each day of the week and, in addition, to be at the precinct voting place on designated Saturdays throughout the registration period.[9]

Additional evidence establishes that the adoption of the new system received considerable publicity through the mass media. Newspaper advertisements, radio announcements and placards explained the mechanics of the new system, the need for registration and the names and addresses of registrars for all of the precincts. These efforts, which were utilized with some success in the April 1962 registration campaign, were repeated in 1964 prior to the general election and were in fact enlarged to include letters distributed to the schoolchildren urging their parents to register to vote.

Plaintiff's evidence also established that these publicity efforts were fairly directed to all persons residing in the county, regardless of race or color, and that special conferences were held with Negro leaders for the specific purpose of obtaining their assistance in informing Negro citizens of where and when to register. Indeed, three of the five commissioners (or so-called deputy registrars) appointed during the April 1962 registration campaign to assist in registration were Negroes. Moreover, there is no evidence that any reg-

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[7]Such books, however, are required by North Carolina law to be closed for a period of 21 days prior to an election.

[8]Registrars are paid a general fee as established by North Carolina law and, in addition, receive a fee for each person they register.

[9]This requirement that the registrars be at the voting precincts on Saturdays was motivated by concern for the convenience of the voters of Gaston County and is wholly independent of and in addition to the requirements of North Carolina law generally.

istrar or member of the Board of Elections advised any Negro that he would be refused registration because of his race. It also appears that the Board of Elections did not receive any complaints from any Negro citizen that he had been denied his right to register because of a test or device.

In its post-trial brief, plaintiff contends that, given the above, it has satisfied its burden of proof and is therefore entitled to a declaratory judgment that no test or device has been used for a period of five years preceding the filing of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. Indeed, as plaintiff correctly points out, the Supreme Court, in interpreting the burden placed upon a plaintiff in a Section 4 case, has commented that the state or political subdivision "need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past five years * * *." *South Carolina v. Katzenbach*, 383 U.S. 301, 332 (1966).

But the Supreme Court does not stop there and neither can we. The statement quoted above continues: "and then refute whatever evidence to the contrary may be adduced by the Federal Government." *Ibid.* Accordingly, we must consider the evidence introduced and the arguments presented by the United States, bearing in mind the critical words of Section 4: "no such test or device has been used * * * for the purpose *or* with the effect of denying or abridging the right to vote on account of race or color." (Emphasis added.)

III.

The United States attempted to establish that the literacy test in Gaston County was used both "for the purpose" *and* "with the effect" of denying or abridging the right to register to vote on account of race or color. With respect to the former standard—"for the purpose"—the United States submitted the depositions of 29 illiterate or nearly illiterate whites who testified that they were registered to vote with-

out being required to demonstrate their literacy; indeed, 15 of these people testified that they affirmatively told the registrar that they could not read or write. In addition, the United States submitted a notebook of registration forms which indicates that the 29 persons mentioned above were not the only whites who were permitted to register although they were incapable of satisfying the literacy requirements of North Carolina law.

The United States seemingly admits that this waiver of the literacy requirement which resulted in the registration of a few whites, standing alone, does not necessarily establish that the literacy test was used in Gaston County for the purpose of denying or abridging the right to vote on account of race or color. The United States asserts, however, that this policy of waiver was not made public[10] so that Negroes justifiably believed that they would either be required to demonstrate literacy to the satisfaction of the registrar or be embarrassed by being turned away. To support this argument, the United States reminded this court of the purpose for which the literacy test was first adopted in North Carolina and the manner in which it has been applied since its inception.[11] The United States also introduced evidence showing that during the past five years Negro leaders

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[10]Indeed, although the paid advertisements of the Gaston County Board of Elections did not state that the literacy test was being enforced, there was considerable publicity, in the form of editorials and public interest stories, of the fact that election officials were enforcing the literacy requirements of North Carolina law, perhaps for the first time on a nondiscriminatory basis. Whatever this shows in the context of purposeful discrimination, such publicity does have significant ramifications with respect to the "effect" of such tests. *See* Note 21 *infra*.

[11]The adoption of the literacy test was discussed in the Raleigh News and Observer of January 14, 1900, in a story which carried the headline: "WHITE SUPREMACY MADE PERMANENT." The article explained that whites registered before 1908 would be exempted from the literacy requirement (grandfather clause), but that the test would be applied with respect to Negroes so as to "eliminate the baneful and ruinous influence of irresponsible negro suffrage."

refrained from encouraging illiterate Negroes to attempt to register and that several Negroes who did attempt to register were rejected because of their inability to read or write.

To rebut the Government's evidence and its inferences, Gaston County relies primarily upon the depositions of ten illiterate or nearly illiterate Negroes who were registered despite their admitted inability to comply with North Carolina's literacy requirement. In addition, Gaston County argues that even if the literacy test was used for the purpose of denying or abridging the right to register to vote on account of race or color, incidents of such use have been few in number so as to fall within the exception clause of Section 4(d). Insofar as we are here concerned with that language of the Act which speaks of purposeful discrimination, we must agree that the Gaston County Board of Elections has made commendable efforts to promote registration of all citizens residing in that county, irrespective of race or color. For the reasons hereinafter stated, however, we find it unnecessary to determine whether purposeful discrimination within the meaning of Section 4(a) has been practiced in Gaston County since April 1962.

IV.

Before proceeding to a discussion of the evidence adduced by the United States tending to show that the literacy test was used in Gaston County "with the effect" of abridging the right to register to vote on account of race or color, we believe it expedient to consider another argument of the United States based on the same evidence which was relied upon to establish purposeful discrimination. We refer now to the Government's contention that termination of the suspension of the literacy test in Gaston County would run afoul of Section 101(a) of the Civil Rights Act of 1964, 42 U.S.C. § 1971(a)(2)(A) (Supp. II 1965-66). That section provides that, in determining whether an individual is qualified under state law to vote in any federal election, no person acting under color of law may apply any standard different from or more stringent than the standards

which have been applied under such law to other individuals within the political subdivision who have been found qualified to vote. The United States argues that, according to this section, Gaston County may not deny registration to any person on the ground of illiteracy, irrespective of whether or not there has been racial discrimination, so long as illiterates remain on the registration rolls.

It is true that the chairman of the Gaston County Board of Elections testified that he believed that if the literacy test were reinstated the registrars would be bound by North Carolina law to enforce the letter and spirit of the state's literacy requirement. Moreover, he testified that he did not envision either a general reregistration of voters or a purging of illiterates so that if illiterates are presently registered, they will remain eligible to vote. Since there is evidence that in the past illiterates have been permitted to register, we could simply find that, unless the registration rolls are purged of all illiterates, Gaston County cannot, under Section 101(a) of the Civil Rights Act of 1964, reinstate its literacy test. However, since on the record before us we find that the literacy test has been used in Gaston County during the five years preceding the filing of this action "with the effect" of abridging the right to register to vote on account of race or color, we shall not rest on a theory which would be rendered irrelevant if the Gaston County Board of Elections were to decide to purge its rolls.

Moreover, during the hearings on the Voting Rights Act of 1965 before the Judiciary Committee of the House of Representatives, the Attorney General of the United States testified that suspending literacy tests was a more desirable approach than requiring a complete reregistration of all voters. He explained his position as follows:

> "To subject every citizen to a higher literacy standard would inevitably, work unfairly against Negroes—Negroes who have for decades been systematically denied educational opportunity available to the white population.

"Such an impact would produce a real constitutional irony—that years of violation of the 14th amendment right of equal protection through equal education would become the excuse for continuing violation of the 15th amendment right to vote."[12]

We believe that this statement goes to the heart of the problem we face today, particularly if reinstatement of the literacy tests were permitted, and requires us to find that, within the intendment of the Act,[13] the literacy test in Gaston County has been used with the effect of abridging the right to register to vote on account of race or color.

V.

The Supreme Court of North Carolina described the state statute requiring a demonstration of literacy as a prerequisite to registering to vote in these words:

"* * * It demands more than the mere ability to write one's own name and to recognize and read a few simple words. * * * The standard or level of performance is the North Carolina Constitution. To be entitled

[12] Hearings before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., p. 16 (1965).

[13] Both the Senate and the House of Representatives, in their reports accompanying the bill which eventually became the Voting Rights Act of 1965, speak to this issue and seemingly adopt the position of the Attorney General. Thus the Senate commented:

"* * * [T]he educational differences between whites and Negroes in the areas to be covered by the prohibitions—differences which are reflected in the record before the committee—would mean that equal application of the tests would abridge 15th amendment rights. This advantage to whites is directly attributable to the States and localities involved." 131 Senate Reports, 89th Cong., 1st Sess., No. 162, Part 3, p. 16 (1965).

The House agreed:

"* * * [E]ven fair administration of the tests, following decades of discrimination * * * would simply freeze the present registration disparity created by past violations of the [Constitution]. * * *" 162 House Reports, 89th Cong., 1st Sess., No. 439, p. 15 (1965).

> to register as an elector one must be able to read and write any section thereof. Admittedly, the standard is relatively high, even after more than a half century of free public schools and universal education.* * *" *Bazemore v. Bertie County Board of Elections*, 254 N.C. 398, 119 S.E.2d 637, 641 (1961).

If the standard is relatively high "even after more than a half century of free public schools," it must be much more difficult to attain for a person who has been denied the full benefits of such "universal education."

During the entire period when the persons presently of voting age were of school age, the schools in Gaston County were segregated; indeed, those schools remained totally segregated until 1965, when token integration was begun.[14] And not only were the schools segregated—thereby bringing into play the holding of *Brown v. Board of Education*, 347 U.S. 483, 495 (1954), that "[s]eparate educational facilities are inherently unequal"—but it appears that the Negro facilities have in fact been of appreciably inferior quality.

The United States introduced evidence which indicates the difference between white and Negro education in Gaston County.[15] The evidence is admittedly fragmentary in nature, but the conclusion is inescapable that porportionately less money has been spent on Negro education than on white. For example, the following chart shows the average annual salary for a white and a Negro school teacher for the years indicated:[16]

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[14] The evidence reveals that in Gastonia when, as a result of desegregation, 300 white students were zoned into a school with 300 Negro students, 297 of the white students were transferred out almost immediately.

[15] *See* Defendant's Exhibit No. 2, Excerpts from the Report of the Superintendent of Public Instruction of North Carolina, from which are derived all of the statistics which follow.

[16] Although Gaston County would have us direct our attention to its present efforts to equalize opportunities—for education as well as voting—we cannot close our eyes to the fact that the majority of

YEAR	WHITE	NEGRO
1908-09	$ 225.28	$ 91.17
1918-19[17]	566.90	113.64
1928-29	1,053.04	508.52
1938-39	933.97	681.07
1948-49	2,331.01	2,324.91

Below are the figures for the same years of the value of school property per pupil:

YEAR	WHITE	NEGRO
1908-09	$ 12.97	$ 3.90
1918-19	58.84	12.74
1928-29	181.03	66.20
1938-39	165.28	74.71
1948-49	278.39	99.60

The value per classroom was also significantly greater for white than for Negro students:[18]

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today's voters or potential voters were schoolchildren in 1948, 1938, 1928 and even 1918 and 1908. More specifically, according to the Bureau of the Census, 73% of the Negroes of voting age in 1966 would have been enrolled in school, if at all, prior to 1948-49 and 35% of the Negroes of voting age would have been of school age prior to 1918-19. *See* Special Censuses of Selected Counties in North Carolina, 1966 and 1965, p. 8 (Bureau of the Census, Series P-28, No. 1412, May 13, 1966). Since the Negroes' education thus dates back in many instances to 50 or more years ago, we deem it proper and appropriate, in analyzing their present ability to satisfy a literacy requirement, to turn back the clock accordingly. We have not presented the relevant data after the 1948-49 school year, since children entering schools in the 1950's were ineligible on account of age to vote during the five years preceding the filing of this action.

[17]North Carolina teachers were not uniformly certified before 1919, but at that time only 40% of the white teachers were unable to qualify for the lowest state certificate whereas almost 80% of the Negro teachers failed to meet this minimum standard.

[18]The evidence also shows that in the earlier years Negro schoolhouses tended to be constructed of wood whereas white schoolhouses were built of brick, and that in white schools the pupils had desks rather than the benches provided Negro pupils.

YEAR	*WHITE*	*NEGRO*
1928-29	$6,021.24	$2,464.61
1938-39	4,346.58	1,967.25
1948-49	7,765.56	2,618.65

Assembling the same figures in a slightly different fashion, the following chart shows the percentage of the total elementary and secondary school budget for the items indicated which was directed to the Negro school population. The figures in Columns (3) and (4), showing what percentage of the money allocated to *all* teachers and school property was allocated for Negro teachers and property, should be compared with the figure in Column (2) which represents the percentage of those persons enrolled in school who are Negro.

(1)	(2)	(3)	(4)
YEAR	*NEGRO PUPILS*	*SALARIES FOR NEGRO TEACHERS*	*VALUE OF NEGRO SCHOOL PROPERTY*
1908-09	25.5%	10.1%	9.3%
1918-19	21.7%	3.9%	5.6%
1928-29	16.0%	7.6%	6.5%
1938-39	17.2%	14.2%	8.6%
1948-49	16.1%	16.4%	6.4%

A reasonable man might anticipate that this disparity between the expenditures for white and Negro pupils would manifest itself in statistics on the respective educational levels attained by the two groups. Such a man would not be disappointed. In Gaston County, according to the 1960 report of the Bureau of the Census, *U.S. Census of Population: 1960*, Vol. I, *Characteristics of the Population, Part 35, North Carolina*, pp. 35-252 and 35-287 (1963), 3.2 per cent of the whites over 25 years of age have had no schooling whereas the corresponding figure for Negroes is 6.5 per cent, more than double the white figure. The Census figure for four or less years of education are: 17.4 per cent of the whites over 25 and 30.1 per cent of the Negroes over 25.

Indeed, if we look at these statistics from a slightly different angle and use the presumption of literacy embodied in the Civil Rights Act of 1964, that is, a sixth-grade education, we find that 66.4 per cent of the adult whites have received "advanced" education whereas only 51.7 per cent of the adult Negroes have gone beyond the sixth grade level.

These and similar statistics support the contention of the United States that Negroes of voting age in Gaston County were, as children, denied a public education equal to that provided white children. Indeed, the education provided many Negroes hardly reached the literacy level.[19] Conse-

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[19] One of the six witnesses called by Gaston County was Mr. Thebaud Jeffers, principal of the Negro high school in Gastonia. His testimony was in part as follows:

> Q. Mr. Jeffers, do you have an opinion as to whether or not the schools in 1932 had sufficient facilities and were equipped to teach a person to read and write well enough to be able to pass that test or to write any portion of the words of the three sentences that you see there?
>
> A. The Negro schools have been basically concerned—I mean in the early years—with teaching reading, writing and arithmetic.
>
> All of our schools, just about—I think all of them would have been able to teach any Negro child to read and to write so that he could read a newspaper, so that he could read any simple material that didn't have any foreign words or words of foreign extraction in them.
>
> This has always been true and I don't think that this was ever an argument anywhere, except that maybe the facilities were different.
>
> But they have been basically able to teach this and this is what they have done.
>
> Q. Yes. It is your opinion then that this test could be just copied or written as was required prior to the time we were placed under the '65 Voting Rights Act?
>
> Is that your opinion that a person could do that or—
>
> A. Yes, I am certain.
>
> Q. The schools were sufficient so they could do that?
>
> A. Yes, sir.
>
> Q. All right, sir.

Gaston County relies on this testimony as proof that the educational facilities, albeit segregated, were of sufficient quality to enable Negroes

quently, we must conclude that, in addition to denying Negroes equal educational opportunity as a matter of law through racial segregation, Gaston County has also denied Negroes that same opportunity as a matter of fact. Moreover, since Gaston County has not refuted any of this evidence, *South Carolina v. Katzenbach, supra*,[20] we must agree

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to pass the literacy test. We do not agree. Not only is the testimony itself unpersuasive, but Mr. Jeffers came to Gaston County in 1932 and his knowledge therefore dates only from that time. In addition, in this area the cold statistics and the testimony of persons actually enrolled in the schools during the past 50 years speaks louder than mere contemporary conclusions from interested witnesses.

[20] As noted above in text, the language of the Supreme Court is quite explicit: "[A]n area need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past five years, *and then refute whatever evidence to the contrary* may be adduced by the Federal Government." *South Carolina v. Katzenbach, supra* Note 5, 383 U.S. at 332. (Emphasis added.) The placing of the burden in a § 4(a) Voting Rights Act case could not be more emphatic—it lies squarely on the certified subdivision.

The concurring opinion is troubled by the fact that "no evidence has been adduced in this case to show that Negro schools in Gaston County were or were not giving their students the very elementary training necessary to pass the Gaston County literacy test"; "[t]here is no proof that had Gaston County Schools been integrated, more Negro children would have completed the fourth grade"; "[n]or has it been shown how segregated schools were responsible for the fact that more Negroes than whites in Gaston County attended no school at all." But the Government is not to be faulted for the failure, if any, of such evidence. Rather it is for Gaston County to prove that the segregated Negro schools *were* giving their students the very elementary training necessary to pass the literacy test; that more Negro children would *not* have completed the fourth grade if the schools had been integrated; or that segregated schools were *not* responsible for the fact that more Negroes than whites attended no school at all. The concurring opinion suggests that "[a] more logical inference from this data might be that economic necessity, not segregated schools, compelled the Negro child to participate in an income producing activity for his family at an earlier age, at the expense of formal education," but it is for Gaston County to suggest and support such inferences, not for this court. Gaston County would, of course, also have to

with the Government's position that any literacy test imposed upon Negroes as a precondition to voting would have the effect of abridging the right of many Negroes to vote on account of race or color.[21] This conclusion requires that Gaston County's application for a declaratory judgment that it has not used a literacy test during the five years per-

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show that the economic necessity was not itself the result of segregated education of the Negro parents.

Finally, the concurring opinion "agree[s] that a showing of a discrepancy in formal education between the races may in some circumstances indicate a potential discriminatory effect in the use of a literacy test." Although it taxes the United States with not going further and demonstrating that these "potential" effects are "actual" effects, we believe that the Government has satisfied its burden and that Gaston County has failed to prove that these "potential" effects are *not* "actual" effects.

[21] One of the Negro leaders testified that she had handpicked the persons they encouraged to attempt to register:

> Q. Which people did you pick to take up there to register?
>
> A. People that I thought could read.
>
> Q. Why did you just pick those?
>
> * * *
>
> A. Well, during that time you had to read the Constitution of the United States, so it was very embarrassing to have some one up there that couldn't read the Constitution and I knew that they would be turned down * * *.

We noted earlier that the fact that the literacy test was to be enforced received considerable publicity in the months that followed the April 1962 registration campaign. *See* Note 10 *supra*. Consequently, we have such testimony as follows:

> Q. Did you learn how to read and write?
>
> A. A little bit; not much.
>
> Q. Did you ever register to vote in Gaston County?
>
> A. No, I never did.
>
> Q. Did you ever try to register to vote?
>
> A. I didn't try.
>
> Q. Why was that?
>
> * * *
>
> A. After somebody told me I had to be educated. I knowed I couldn't read or write and that's why I didn't register.

ceding the filing of the action with the effect of abridging the right to register to vote on account of race or color must be denied.[22]

Justice as well as law dictate this result. It would be incongruous to allow a state or county to disenfranchise people for an inability to pass a literacy test, when that ability was denied them as a result of discriminatory state action.[23] Given the congressional purpose of the Voting

[22] We find no dearth of authority for the proposition that denial of equal educational opportunities to Negroes limits the discretion of a state or political subdivision with respect to its voting standards. *See* the dissenting opinion of Judge Brown, generally approved by the Supreme Court, in *United States v. State of Mississippi*, S.D. Miss., 229 F.Supp. 925, 990-993 (1964) (three-judge court), *reversed*, 380 U.S. 128 (1965). *See also United States v. State of Texas*, W.D. Tex., 252 F.Supp. 234, 241, 245 (three-judge court), *affirmed per curiam*, 384 U.S. 155 (1966). It is significant that in both of these pre-Voting Rights Act cases the Government had to bear the burden of proof, whereas in the instant case the burden rests with Gaston County. When one reads the opinions in these cases with this fact in mind, the conclusion is inescapable that there is ample authority for the approach utilized here. Finally, we find that there is nothing to preclude the result we have reached in *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 (1959), which upheld the constitutionality of the very literacy test in question here. In *Lassiter* Mr. Justice Douglas, speaking for the Court, stated:

> "Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot. *No such influence is charged here.* * * *" 360 U.S. at 53. (Emphasis added.)

[23] Plaintiff argues that to deny its application for declaratory judgment solely because the schools in its jurisdiction have been segregated is to attempt to do judicially what Congress chose not to do legislatively. This argument is premised on the following propositions: (1) Congress knew that the educational facilities of the South have been and in many instances remain segregated; (2) Congress would not have provided in § 4(a) that a state or subdivision could terminate the automatic suspension of its test in less than five years unless Congress believed that a state or subdivision would in fact be able to establish to this court's satisfaction that it had not used its test for the purpose or with the effect of denying or abridging the right to

Rights Act of 1965, we do not believe it is within our power so to reward years of unconstitutional state action against its Negro citizens. Accordingly, the application of Gaston County for a declaratory judgment is

Denied.

/s/ J. Skelly Wright
United States Circuit Judge

/s/ Spottswood W. Robinson, III
United States Circuit Judge

Washington, D.C.
August 16, 1968.

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vote on account of race or color. There is nothing in the language of the Act or its legislative history to support this argument.

For obvious constitutional reasons, the triggering mechanism of § 4 (a) applies equally to all states and subdivisions and to all races. Thus Apache County, Arizona, Elmore County, Idaho, and the State of Alaska were covered by § 4(b), brought suit under § 4(a) to reinstate their tests, and obtained the judgments they sought. *See* Note 1 *supra*. Moreover, we do not rely solely on the fact that the schools in Gaston County have been segregated during the period when persons presently of voting age were of school age, but instead have reviewed the evidence adduced by the Government *in this case* and concluded that the Negro schools were of inferior quality in fact as well as in law. Our decision is thus not an "all encompassing rule" which binds every political unit presently certified under the Act despite "the merits of any case [it] might present." Concurring opinion p. 14.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

File date, August 18, 1968

[Caption Omitted in Printing]

GASCH, J., concurring in the result. Gaston County is a political subdivision of North Carolina, located in the Southern part of the State. The county seat of Gaston County is the City of Gastonia. As of January 24, 1966, approximately one-third of the County's population—45,429 out of 135,775 persons—lived in Gastonia. The remaining two-thirds lived in small towns in rural areas within the county.

A 1966 Special Census showed that 69,252 white persons and 8,407 Negroes of voting age lived within the County. Of these, 63.3 percent of the white persons (43,874) and 52.2 percent of the Negroes (4,388) were registered to vote in November, 1964. In the general election of November, 1964, only 37,326 people of those registered actually voted, a figure comprising more than 50 percent of the registered voters, but less than 50 percent of the voting age population. Of the registered Negroes, 68.95 percent (3,114) actually voted; of the registered white persons, 80.97 percent actually voted. Therefore, despite the fact that more than 50 percent of Gaston County's voting age population was registered to vote, Gaston County was certified under the Voting Rights Act of 1965. As a result of this certification, all literacy tests in the County were suspended. On August 18, 1966, Gaston County filed this suit in the United States District Court for the District of Columbia.

The majority opinion suggests that the evidence is inconclusive to prove that Gaston County deliberately and purposefully used its literacy test to deny to Negroes their rights to register and vote. I agree. Gaston County's regis-

tration practices do not present the kind of clear repressive discrimination against Negroes in the exercise of their franchise that the Act was designed to correct. There is no evidence in Gaston County of large pockets of qualified Negroes who have been discriminated against in their attempts to register and vote. Indeed, there is no evidence of *any* Negro who has been denied registration because of his race. Nor is there evidence of a large discrepancy between percentages of Negroes and whites who were registered to vote. Approximately fifty-two percent of voting age Negroes and sixty-three percent of voting age whites were registered to vote in 1964. There is evidence that some illiterate whites were allowed to register in the County. There is also evidence that some illiterate Negroes were registered. No general pattern or practice was shown.[1] On this record, it would be impossible to find that Gaston County used its literacy test for the purpose of discriminating against Negroes.

I do not concur that there is evidence to sustain the finding of the majority that the test was used with a discriminatory effect.[2] However, I concur in the result the majority reaches because, in my judgment, Gaston County has failed to meet a necessary element of its proof.

As a majority has pointed out, the Voting Rights Act added a new dimension to voting rights enforcement by presuming discrimination where a literacy test was used and where 50 percent of the voting age population was not registered or did not vote in 1964. In these circumstances, the state or political subdivision was required to rebut this presumption in order to reinstate literacy tests within its borders. The Government was thereby relieved of proving endless individual cases of discrimination in the slow and expensive avenues of court review.

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[1] The evidence offered was that 29 illiterate white persons and 11 illiterate Negroes were registered. Eighty-nine percent of those living in the county of voting age were white.

[2] See Part II, *infra*.

Both the language and the legislative history of the Voting Rights Act of 1965 make it clear that the burden of proof placed on the plaintiff state or political subdivision by the Act involves a showing of nondiscrimination not only in county, state, and national elections, but also in township and municipal elections, and in every other election within the state or political subdivision. Section 4(a) of the Voting Rights Act provides in pertinent part that "no citizen shall be denied the right to vote in any Federal, State, or *local* election because of his failure to comply with any test or device . . . [which has been suspended because of a certification under the Act]." (Emphasis added). The section further states that a county is not eligible for declaratory relief if any court has found within the past five years voter discrimination "anywhere in the territory of such plaintiff." A fair interpretation of the statutory requirement is that all elections, including local elections, must be free of voter discrimination for five years before a literacy test can be reinstated.

In his testimony before the House Judiciary Committee on the Voting Rights Bill, former Attorney General Katzenbach emphasized that the bill would apply to every election in the state:

> *The Chairman.* This bill covers Federal, State, and municipal elections. Would it cover an election for a school bond?
>
> *Mr. Katzenbach.* Yes; it would, Mr. Chairman. Every election in which registered electors are permitted to vote would be covered by this bill.[3]

The Attorney General further stated that each certified subsection or state is to be treated as a unit. No subdivision or part of an area that has been certified can come out alone; each certified unit must petition this Court for relief as a

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[3] *Hearings on H.R. 6400, Before Subcommittee No. 5 of the House Committee on the Judiciary*, 89th Cong., 1st Sess., ser. No. 2 (1965), 21.

whole.[4] Thus, for Gaston County successfully to resist the continued suspension of its literacy test it must show that all elections within the County have been untainted by discrimination. A state would be responsible for all elections at every level within the state if it were petitioner; a county, when certified, faces the burden of showing an absence of discrimination in all of the elections within its territorial limits, including municipal elections.

The record contains no proof concerning municipal election practices within Gaston County. Yet the record does indicate that eleven municipalities in Gaston County hold separate municipal elections. These municipalities conduct their own voter registrations with their own municipal registrars, and apply their own literacy tests and other voting qualifications.

Moreover, such proof was not forthcoming from the present plaintiffs. Two successive Chairmen of the Gaston County Board of Elections testified that the County Board of Elections exercised no control over municipal elections within the County. Mr. William Mack Davis (Chairman from 1960 to 1964) testified that while the Gaston County Board of Elections exercised control over all Federal, State, County, and Township elections, it had no control over any municipal elections in the County.[5] Mr. Linwood Hollowell, Jr., (Chairman since 1964) confirmed Mr. Davis' testimony:

> Q: Now, Mr. Hollowell, when this suit was brought on behalf of Gaston County, I think it has been testified that you have no direct connection with the city registration in the different municipalities in this county.
>
> A: We have no jurisdiction concerning registration or voting in any municipality in our county.

* * *

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[4] *Id.*, at 99.

[5] Transcript, p. 61.

Q: You don't know whether they comply with the Voting Rights Act, do you?

A: To the best—I don't know. I just don't know. I just have to be honest with you. I have not checked.[6]

Certification of Gaston County under the Voting Rights Act suspended the literacy test for all elections within the County. A judgment for the County in this action would reinstate the literacy test for municipal registrars as well as all others in the County. The County has made no showing that a literacy test has not been used by municipal registrars in Gaston County in a discriminatory fashion. This failure of proof marks a fatal defect in its case. For this reason, I would deny declaratory relief under the Act and accordingly, I concur in the decision of the majority.

II.

The majority denies declaratory relief to Gaston County on the ground that inferior educational opportunities offered to Negroes in Gaston County's segregated schools places them at a material disadvantage to white persons in passing the Gaston County literacy test; therefore, the test has had a discriminatory effect against Negroes in registering and voting. While I accept the majority's assumption that the quality of education received by Negroes in Gaston County in segregated Negro schools was inferior to that received by white persons in white schools, I am not convinced that, *in the context of Gaston County's literacy test*, this evidence justifies an affirmative finding of a discriminatory effect.

The Gaston County literacy test, as amended in accordance with the Civil Rights Act of 1964, consisted of copying one of three sentences in a space provided under the sentence itself. (The test was orally administered before 1964.) The applicant had his choice as to which of the three sentences he wished to copy. To pass the test, he was

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[6] Transcript, pp. 142-44.

not required to spell each word correctly or even to write every word in the sentence, as long as he could print or write a reasonable facsimile of the sentence. He was not asked to interpret or explain the sentence to the registrar. And applicants were given as much time as they needed to complete the test. In some instances, this amounted to an hour or more. There is nothing to indicate that the pre-1964 oral test was administered with any more rigidity.

Given the very low level of competency required by the test, it is not at all clear that even the Negro schools in Gaston County did not provide adequate and sufficient training for Negroes to pass the test. It may well be that even though the Negro student received an inferior education, he was at least equipped to pass this simple test.

The point may be made by analogy. Assume two medical students of equal ability attended two different medical schools, one of which is significantly inferior to the other. As a result, one of the students received a much lower quality education than the other. Because of his inferior educational background, the one who graduated from the second-rate school would probably be at a disadvantage if the two were tested on their respective abilities to diagnose rare diseases, or perform a difficult operation. If the test considered merely of taking a pulse, or reading a thermometer, however, both might do equally well, despite the disparity in educational background. The latter tests are of such an elementary character that both schools would have provided sufficient training to enable their students to pass them.

Similarly, where schools are segregated, it may reasonably be assumed that at any given grade level, Negro students will be less prepared academically than their white counterparts. If Negro and white students are then asked to demonstrate an ability in creative writing, interpretation of language, or higher mathematics, the Negro, who attended inferior schools, would be at a material disadvantage. Where the test consists merely of reading or copying a

printed sentence, however, the quality of education each received is less significant in terms of the ability of each to pass it. Both might be prepared to score equally well on the simple test, even though, at the higher levels of achievement, the white student, by reason of his superior education, would be expected to do better.

The point to be made is that no evidence has been adduced in this case to show that Negro schools in Gaston County were or were not giving their students the very elementary training necessary to pass the Gaston County literacy test. Given the low level of achievement called for by the Gaston County test, I think such proof is essential to support the affirmative conclusion which the majority has reached, that the segregated education did in fact have a material impact on the respective abilities of Negroes and whites to pass the test.

To support its finding that there was such an impact, the majority has pointed out that the Gaston County public schools were legally segregated until 1965; and that the annual per-pupil expenditure at the Negro schools was consistently much smaller than that appropriated for the white schools. The majority also cites census data that proportionally fewer Gaston County Negroes than whites over age 25 attained at least a fourth grade education during the period the schools were racially segregated, and that more than twice as many Negroes as whites in Gaston County received no formal education at all. In my opinion, this evidence is insufficient to support the majority's case. There is no proof that had Gaston County schools been integrated, more Negro children would have completed the fourth grade. Nor has it been shown how segregated schools were responsible for the fact that more Negroes than whites in Gaston County attended no school at all. A more logical inference from this data might be that economic necessity, not segregated schools, compelled the Negro child to participate in an income producing activity for his family at an earlier age, at the expense of formal education.

Footnote 20 emphasizes that the burden of proof is upon the petitioner. It quotes from *South Carolina v. Katzenbach* and in pertinent part emphasizes that petitioner "refute whatever evidence to the contrary may be adduced by the Federal Government."

The critical question then arises: What evidence has the Government adduced that demonstrates that an educational test or device, *i.e.*, copying a single sentence, has the effect of denying or abridging the right to vote? Whatever weight may be accorded the respondent's cold statistics is, in my opinion, dispelled by the testimony of the petitioner's expert witness who expressed the unqualified and unchallenged opinion that the Negro schools prior to integration were sufficient to enable the students to pass the type of test required. There it is important to note that the present test is ability to copy a single sentence. We are not concerned with the prior test which is discussed in *Bazemore v. Bertie County Board of Elections*, 254 N.C. 398, 119 S.E.2d 637, 641 (1961). Likewise, we are not concerned with conditions in 1900 and attitudes represented therein.[7]

To summarize this point, I agree that a showing of a discrepancy in formal education between the races may in some circumstances indicate a potential discriminatory effect in the use of a literacy test.[8] But it is *actual* effects, not *potential* effects, that are proscribed by the Act. I do not feel that the evidence justifies a finding that educational disparities in Gaston County, when viewed in the light of the literacy test actually administered there, had an *actual* discriminatory effect on voter registration.[9]

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[7]See footnote 11 of the majority opinion.

[8]For example, where the test requires the registrant to explain the meaning of a section of the Constitution an inferior education could render the Negro at a real disadvantage, because of the high level of competency necessary to pass it.

[9]The majority opinion, in footnote 22, cites as support for the proposition that denial of equal educational opportunities to Negroes

Several consent judgments have been entered under the Voting Rights Act. One such judgment involved Wake County, North Carolina.[10] In the *Wake County* case, the

limits the discretion of a state or political subdivision with respect to its voting standards *United States v. State of Texas*, 252 F.Supp. 234 (W.D. Tex. 1966), *affirmed per curiam*, 384 U.S. 155 (1966). In that case, the court was asked to find a discriminatory effect in the use of a poll tax on the ground that Negroes, deprived of an equal educational opportunity, were less able to succeed financially and therefore less able to pay the tax required to vote. As the majority opinion is essentially a holding that Negroes, deprived of an equal educational opportunity in Gaston County, were less able to pass the test required to vote, I consider the two cases similar in theory. The court in the *Texas* case declined to find discrimination on the evidence submitted. The holding of that court precisely expresses my concern over the sufficiency of the evidence in the case at bar:

> "The evidence clearly shows, and the United States does not dispute, that as [sic] least during the last twenty years there has not been any attempt to use the poll tax overtly to deprive the Negro of his right to vote. Despite unlimited pretrial discovery, no instances of outright discrimination have been shown or alleged. In fact, the United States has relied primarily on evidence of discrimination in public education and the resulting economic disadvantages to establish that the poll tax is more of a burden upon the Negro than upon the white voter. Although we consider the United States' method of proof a legitimate means for reaching such a conclusion, the facts will not support a finding of racial discrimination. The figures most favorable to the United States' position indicate that of the eligible persons between the ages of 21 and 60, 57.3% of the whites and 45.3% of the Negroes pay their poll tax. It is to be noted that both of these figures, although not commendable in terms of the total electorate, are subtantial [sic] and that the difference between them is only 12%. If the disparity had been larger, we might have been more inclined to accept the evidence of a historical background of discrimination and the result of the poll tax sales as sufficient to justify a finding that the poll tax discriminates against Negroes. The disparity, however, is not glaring. Indeed, it is relatively small. The evidence points to other possible reasons for this difference." 252 F.Supp. at 245.

The factual parallel between the *Texas* case and the case at bar is highly significant, particularly regarding the absence of proof of outright discrimination and the similar percentages of Negroes and whites who were registered to vote.

[10] Civil Action No. 1198-66 (January 23, 1967).

Attorney General consented to a judgment that no test or device had been used in the past five years with the purpose *or effect* of denying or abridging the right to vote on account of race or color. Wake and Gaston are neighboring counties. The same State literacy test requirement applies to both. The census table on which the majority relies shows that proportionally fewer Negroes than whites in Wake County had fourth grade educations and that many more Negroes than whites had no schooling at all. These considerations lead this Court to strike down a literacy test in Gaston County, but they were not applied to deny Wake County use of its literacy test. Nor was any mention of segregated schools or discrepancies in Negro and white grade level attainment made in *Apache County, et al. v. United States,*[11] *State of Alaska v. United States,*[12] or *Elmore County, Idaho v. United States,*[13] the other consent judgments entered under the Voting Rights Act. The majority opinion seems, then, to impose a different and more difficult burden of proof in the case of Gaston County than the Department of Justice or this Court has applied to any other case under the Voting Rights Act.[14]

I am also concerned that the majority's opinion seems to preclude any showing by any Southern state or political

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[11] 256 F.Supp. 903 (1966).

[12] Civil Action No. 101-66 (August 17, 1966).

[13] Civil Action No. 320-66 (September 22, 1966).

[14] One other case cited by the majority as support for the proposition that denial of equal educational opportunities may affect permissible voting standards is *United States v. State of Mississippi,* 229 F.Supp. 925 (S.D. Miss. 1964), *reversed,* 380 U.S. 128 (1965). In that action for injunctive relief, the United States sought to have registered "any Negro applicant who is over age 21, *able to read,* a resident for the period of time prescribed by state law, and not disqualified by state laws disfranchising the insane and certain convicted criminals." (See 380 U.S. at 135, emphasis supplied). While that case did not involve the statute under consideration here, the relief sought even in those aggravated circumstances should be considered as part of the context of the case.

subdivision to reinstate its literacy test before the five-year suspension period has expired. Because the decision of the majority in this case is so broad and so far-reaching, it will have the effect of disqualifying any political unit presently certified under the Act from obtaining a declaratory judgment before five years of suspension of its literacy test have elapsed. These units are not denied declaratory relief on the merits of any case they might present; they are now bound by an all encompassing rule, the soundness of which they had no opportunity to contest, which presents a burden of proof that will be impossible for them to meet.

From the President's Message to the Congress proposing the Voting Rights Act,[15] and the hearings[16] and floor debate[17] in the Congress, it is clear that the Voting Rights Act was primarily directed at the Southern states. In the Act, the Congress allowed a fair opportunity for a certified unit to rebut the presumption that its literacy test was used in a discriminatory manner. Thus, sections 4 and 5 of the Act provide a procedure whereby a State or political subdivision which has been the subject of a certification under the Act, may petition this Court for declaratory relief to reinstate its test before the five-year suspension period has elapsed. Sections 4 and 5 will provide no remedy to a Southern state, however, if, as the majority finds, a segregated school system coupled with census data showing higher literacy and education for whites than for Negroes, is sufficient to preclude recovery under the Act. We can take judicial notice that the segregated school system was the prevailing system throughout the South. If this were

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[15] 111 *Cong. Rec.* 4924 (daily ed. March 15, 1965).

[16] See generally, *Hearings on H.R. 6400 Before Subcommittee No. 5 of the House Committee on the Judiciary*, 89th Cong., 1st Sess., ser. 2, (1965); *Hearings on S. 1564 Before the Senate Committee on the Judiciary*, 89th Cong., 1st Sess., (1965).

[17] See generally, *Cong. Rec.*, 89th Cong., 1st Sess., (April 13 - May 26, 1965) (Senate); *Cong. Rec.*, 89th Cong., 1st Sess., (July 6 - July 9, 1965) (House).

what Congress had in mind, it would have stated that no test could be used where literacy was higher among whites than among Negroes. I do not believe that Congress intended that the Act be interpreted in such a way as to render §§ 4 and 5 inapplicable to Southern states or those which had segregated educational systems. To the extent the majority opinion reaches this result, it is not, in my judgment, in accord with the intent of Congress.

For the reasons hereinabove stated, I concur in the result, but not the grounds of decision of the majority.

OLIVER GASCH
Judge

Date: August 14, 1968

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 701

GASTON COUNTY, a Political Subdivision of the State of North Carolina,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

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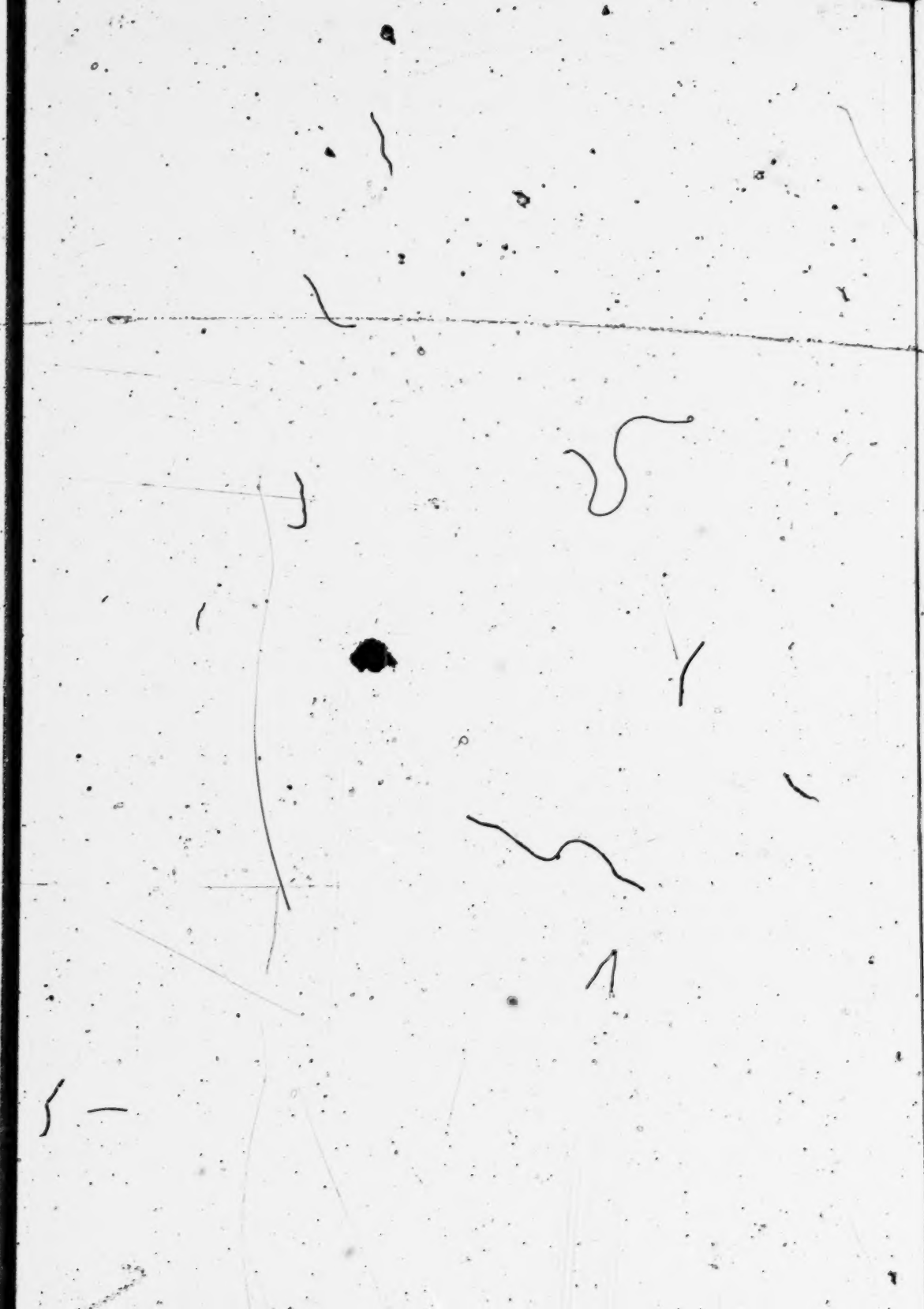

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No.

GASTON COUNTY, a Political Subdivision of the State of North Carolina,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

Appellant appeals from the decision of the United States District Court for the District of Columbia, entered August 16, 1968, denying the plaintiff's motion for declaratory judgment and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial and important question is presented.

OPINIONS BELOW

The opinion of Circuit Judges J. Skelly Wright and Spottswood W. Robinson, III of the United States District Court for the District of Columbia (not yet reported) is set forth in Appendix A, *infra*, pp. 9-28, and the opinion of District Judge Oliver Gasch (not yet reported) is set forth in Appendix B, *infra*, pp. 29-40.

JURISDICTION

By opinions entered August 16, 1968 (Appendices A and B, *infra*, pp. 9-28 and 29-40, respectively) the statutory three-Judge District Court, convened pursuant to 28 U.S.C. 2284, denied plaintiff's motion for declaratory judgment on the following grounds:

(1) *Majority Opinion:*
That literacy test in Gaston County had been used with the effect of abridging the right to vote or to register to vote on account of race or color in violation of Section 4(a) of the Voting Rights Act of 1965. 42 U.S.C. Section 1973 *et seq.* (Supp. II, 1965-1966). (Opinion of Circuit Judges Wright and Robinson, Appendix A, *infra*, pp. 9-28.) The majority reached this result on the theory that Negroes of voting age in Gaston County, as children, were denied education equal to that provided white children. Consequently, any literacy test imposed upon Negroes as a prerequisite to voting would have the effect of abridging the right of many Negroes to vote on account of race or color. In the Concurring Opinion, Judge Gasch disagreed with the Majority Opinion and declared that there was no evidence to sustain the finding of the majority.

(2) *Concurring Opinion:*
That Gaston County failed to show an absence of discrimination in all elections within Gaston County as required by the Act in that the appellant offered no evidence to refute the presumption that the literacy test was used in a discriminatory manner in

municipal elections which were not within the jurisdiction of Gaston County. (Opinion of District Judge Gasch, Appendix B, *infra*, p. 33.)

A notice of appeal to this Court was filed on September 13, 1968. The jurisdiction of the Supreme Court to review the decision of the three-Judge Court for the District of Columbia is conferred by Section 4(a) of the Voting Rights Act of 1965, 42 U.S.C. Section 1973 *et seq.* (Supp. II, 1965-1966).

STATUTES INVOLVED IN APPEAL

Sections 4(a), 4(b), 4(c) and 4(d) of the Voting Rights Act of 1965, 42 U.S.C. Section 1973 *et seq.* (Supp. II, 1965-1966) and pertinent parts of Article VI, Section 4 of the North Carolina Constitution and Section 163-28 of the General Statutes of North Carolina are reproduced in Appendix C, *infra*, pp. 41-43.

QUESTIONS PRESENTED

1. Whether Gaston County, a political subdivision of the State of North Carolina, during five years prior to institution of this action on August 18, 1966, has used a "test or device" within the meaning of Section 4(a) of the Voting Rights Act of 1965, 42 U.S.C. Section 1973 *et seq.* (Supp. II, 1965-1966) for the purpose or with the effect of denying or abridging the right to register to vote or to vote on account of race or color?

2. Whether a state which had segregated educational systems which produced unequal educational opportunities for Negroes is precluded from securing relief under Section 4(a) of the Voting Rights Act of 1965 for that reason alone?

3. Is a county political unit required by Section 4(a) of the Voting Rights Act of 1965 to show an absence of discrimination in municipal and other elections held within the county unit even though the county unit has no control over such elections?

STATEMENT

This action was instituted on August 18, 1966, in the United States District Court for the District of Columbia for a declaratory judgment pursuant to the Voting Rights Act of 1965, 42 U.S.C. Section 1973 *et seq.* (Supp. II, 1965-1966).

Acting under authority of the "Voting Rights Act of 1965", the Attorney General determined that a "test or device" as defined in Section 4(c) of the Act was maintained in Gaston County, North Carolina, on November 1, 1964. The Director of the Census determined that fewer than fifty (50) per centum of the persons of voting age residing within the political subdivision of Gaston County voted in the presidential election of November, 1964. These determinations were published in the Federal Register on March 29, 1966. 31 *Fed. Reg.* 5080-5081. Upon certification by the Attorney General and the Director of the Census, the use of any test or device was suspended in Gaston County.

On August 18, 1966, appellant, Gaston County, filed its complaint in District Court for termination of the suspension of the test or device used in Gaston County, a political subdivision of the State of North Carolina.

A three-Judge Court was convened pursuant to 28 U.S.C. 2284. Trial of the action was held on June 21 and 22, 1967. The District Court, in an opinion signed by Circuit Judges J. Skelly Wright and Spottswood W. Robinson, III, ruled that Gaston County had used a literacy test as a prerequisite for voting or registration for voting which had the effect of abridging the right to vote on account of race or color. Accordingly, plaintiff's motion for declaratory judgment was denied.

District Judge Oliver Gasch concurred in the result but on different grounds. He disagreed with the majority and stated:

> "On this record, it would be impossible to find that Gaston County used its test for the purposes of dis-

> criminating against Negroes. I do not concur that there is evidence to sustain the finding of the majority that the test was used with a discriminatory effect." (Appendix B, *infra*, p. 30.)

Judge Gasch ruled that Gaston County failed to show absence of discrimination in that it had not offered evidence to show that municipal registrars had not applied the literacy test in a discriminatory fashion, even though Gaston County had no jurisdiction over municipal elections.

THE QUESTIONS ARE SUBSTANTIAL

This is the first case that has proceeded to trial under Section 4(a) of the Voting Rights Act of 1965, 42 U.S.C. Section 1973b (Supp. II, 1965-1966). It presents a case of first impression as to the application of what has been described by Circuit Judge J. Skelly Wright as "the heart of the Act." (Appendix A, *infra*, p. 10.)

The majority opinion is based on the theory that Negroes, as children, were denied equal education with that of whites and consequently any literacy test imposed upon Negroes as a prerequisite to voting would have a discriminatory effect. The majority cited certain statistics to support its conclusion. (Majority Opinion, Appendix A, *infra*, pp. 23-24.) The concurring opinion of Judge Gasch had this to say:

> "The critical question then arises: what evidence has the Government adduced that demonstrates that an educational test or device, i.e., copying a single sentence, has the effect of denying or abridging the right to vote? Whatever weight may be accorded the respondent's cold statistics is, in my opinion, dispelled by the testimony of the petitioner's expert witness who expressed the unqualified and unchallenged opinion that the Negro schools prior to integration were sufficient to enable the students to pass the type of test required. There it is important to note that the present test is ability to copy a single sentence. We are not concerned with the prior test

> which is discussed in *Bazemore v. Bertie County Board of Elections*, 254 N.C. 398, 119 S.E.2d 637, 641 (1961). Likewise, we are not concerned with conditions in 1900 and attitudes represented therein." (Appendix B, *infra*, p. 36.)

The unqualified and unchallenged evidence of the expert referred to by Judge Gasch is that of Mr. Thebaud Jeffers. (Footnote 19 of the Majority Opinion, Appendix A, *infra*, pp. 24-25.) The majority ignored the evidence of the appellant and reached its decision on statistical data never contemplated by the Act as a basis for denying declaratory relief.

The majority in footnote 22 (Appendix A, *infra*, p. 27) states:

> "We find no dearth of authority for the proposition that denial of equal educational opportunities to Negroes limits the discretion of a state or political subdivision with respect to its voting standards." Citing *United States v. State of Mississippi*, S.D. Miss., 229 F. Supp. 925, 990-993 (1964) (three-judge court), *reversed*, 380 U.S. 128 (1965), and *United States v. State of Texas*, W.D. Tex., 252 F. Supp. 234, 241, 245. (three-judge court), *affirmed per curiam*, 384 U.S. 155 (1966).

Appellant submits these decisions are not authority for the majority's position and that there is a "dearth" of authority for the conclusion reached by the majority. Due to the want of authority to support the majority's decision, this Court should establish whether denial of equal educational opportunities to Negroes is sufficient to deny relief under the Act.

The decision of the majority "is so broad and far-reaching" according to Judge Gasch (Appendix B, *infra*, p. 39) that it will prevent any political subdivision now certified under the Act from obtaining declaratory judgment relief before five years of suspension of the test have elapsed. It imposes a burden of proof no state, and particularly no Southern State, can meet. No Southern State, nor any political unit thereof will have a remedy, if:

> ". . . a segregated school system coupled with census data showing higher literacy and education for whites than for Negroes, is sufficient to preclude recovery under the Act." (Opinion of Judge Gasch, Appendix B, *infra*, p. 39.)

The majority opinion stated that evidence submitted by the Government of purposeful use of literacy test to deny Negroes the right to register and vote is inconclusive. However, the opinion does say that the test was used with the effect of discrimination because of a segregated school system. The Attorney General has entered into several consent judgments granting relief to some certified units. One such judgment was entered in *Wake County, North Carolina v. United States*, D. D.C., Civil Action No. 1198-66 (January 23, 1967). Wake County is a political subdivision of the State of North Carolina operating under the same school system as discussed in the majority opinion. The same state literacy test requirement applies to Wake County as well as Gaston County. The majority opinion places a greater burden on Gaston County and other political units that may be certified than the Department of Justice has placed on other political units. Furthermore, the decision of the three-Judge Court is in conflict with another three-Judge District Court where no mention was made of segregated schools or level of grades attained. *Apache County v. United States*, D. D.C., 256 F. Supp. 903 (1966).

District Judge Gasch (Appendix B, *infra*, p. 30) concurred with the majority but his decision was based on a different theory. He concluded that since appellant did not offer evidence showing that municipal registrars had not used the literacy test in a discriminatory fashion, the relief sought by appellant should be denied, even though Gaston County had no jurisdiction over municipal elections within the County. Whether a county, to successfully resist continued suspension of its literacy test, must show that all elections, even though not controlled by the county political unit, are free of discriminatory effect should also be determined.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court has jurisdiction and prays that the denial of plaintiff's motion for declaratory judgment be reversed.

Respectfully submitted,

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Attorney for Appellant

Wesley E. McDonald, Sr.
Of Counsel

APPENDIX A

[Filed August 16, 1968]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GASTON COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NORTH CAROLINA, GASTONIA, NORTH CAROLINA,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

CIVIL ACTION NO. 2196-66

Mr. Grady B. Stott of Gastonia, North Carolina, and Mr. Wesley E. McDonald, Sr. of Washington, D. C., for plaintiff.

Assistant Attorney General (at the time the briefs were filed) Doar and Miss Monica Gallagher and Mr. Frank E. Schwelb, Attorneys, Department of Justice, for defendant.

Before WRIGHT and ROBINSON, Circuit Judges, and GASCH, District Judge.

WRIGHT, Circuit Judge:

Gaston County, North Carolina, brought this action pursuant to Section 4(a) of the Voting Rights Act of 1965, 42 U.S.C. §§ 1973 *et seq.* (Supp. II 1965-66), seeking a declaratory judgment that, during the past five years, no "test or device" within the meaning of the Act has been used in Gaston County for the purpose or with the effect of denying or abridging the right to register to vote or to vote on account of race or color. Although several other counties and one state covered by the Act have instituted similar actions,[1] this is the first case that has proceeded to trial.

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[1] *See Wake County, North Carolina v. United States*, D. D.C., Civil Action No. 1198-66 (January 23, 1967) (plaintiff's motion for summary judgment granted with consent of Government); *Elmore County, Idaho v. United States*, D. D.C., Civil Action No. 320-66 (September

Since we are thus presented with a case of first impression as to the application of what has been described as the heart of the Act, we think it desirable, if not necessary, to elaborate in some detail upon our findings, which lead us to conclude that Gaston County is not entitled to the relief requested.

I

The effect of Section 4(a) of the Voting Rights Act[2] is to suspend the use of tests or devices prescribed by state

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22, 1966) (plaintiff's motion for summary judgment granted with consent of Government); *State of Alaska v. United States*, D. D.C., Civil Action No. 101-66 (August 17, 1966) (plaintiff's motion for summary judgment granted with consent of Government); *Apache County v. United States*, D. D.C., 256 F.Supp. 903 (1966) (plaintiffs' motion for summary judgment granted with consent of Government and motion by Navajo Tribe of Indians and 31 members of Navajo Tribal Council to intervene denied).

[2] Section 4 of the Voting Rights Act, 42 U.S.C. § 1973b, provides in pertinent part as follows:

> "(a) Action by state or political subdivision for declaratory judgment of no denial or abridgement * * *.
>
> "To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color * * *.
>
> * * *
>
> "If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

[continued]

law as a prerequisite to voting or registering to vote in those states or political subdivisions thereof that are included within Section 4(b)'s coverage formula. Under Section 4(b) the Attorney General designates those states or political subdivisions that on November 1, 1964, employed as a prerequisite to voting a "test or device," which includes "any requirement that a person * * * (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class." 42 U.S.C. § 1973b (c). Also under Section 4(b) the Director of the Census certifies any state or political subdivision in which the percentage of persons registered to vote, or who did in fact vote, in the presidential election of November 1964 is less than 50 per cent of the persons of voting age residing in the relevant area. Neither the determination by the Attorney General nor that by the Director of the Census is subject to judicial review. When a state or political subdivision is certified by both the Attorney General and the Director of the Census, it is listed in the Federal Register. Suspension of any test or device in that state or political subdivision is then automatic and immediate.

A state or political subdivision with respect to which the appropriate determinations have been made may wish to

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"(b) Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register.

"The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

"A determination or certification of the Attorney General or of the Director of the Census under this section * * * shall be effective upon publication in the Federal Register."

terminate the suspension of its test or device. Accordingly, the Act provides that it may bring suit for a declaratory judgment against the United States in this court,[3] which is directed to be convened as a three-judge court. The requested relief will be granted, thereby permitting the state or subdivision to reinstate its test or device, if the court determines that no such "test or device" has been used anywhere in the territory of that state or subdivision during the five years preceding the filing of the action "for the purpose or with the effect of denying or abridging the right to vote on account of race or color." The state or subdivision bears the burden of proof, but the burden is not an unreasonable one since evidence that a state or political subdivision has engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color does not preclude reinstatement of the tests or devices if "(1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future."[4] 42 U.S.C. § 1973b(d).

Since the underlying policy and constitutionality of the Voting Rights Act of 1965 in general and Section 4 in par-

[3]The Act, however, provides that this court shall not issue a declaratory judgment favorable to a state or subdivision thereof "for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after enactment of this [Act], determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such [state or subdivision thereof]." 42 U.S.C. § 1973b(a).

[4]In the event this court renders a judgment favorable to the state or subdivision, it nevertheless retains jurisdiction of the action for a period of five years and must reopen the case upon a motion by the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color. 42 U.S.C. § 1973b(a).

> to register as an elector one must be able to read and write any section thereof. Admittedly, the standard is relatively high, even after more than a half century of free public schools and universal education.* * *" *Bazemore v. Bertie County Board of Elections,* 254 N.C. 398, 119 S.E.2d 637, 641 (1961).

If the standard is relatively high "even after more than a half century of free public schools," it must be much more difficult to attain for a person who has been denied the full benefits of such "universal education."

During the entire period when the persons presently of voting age were of school age, the schools in Gaston County were segregated; indeed, those schools remained totally segregated until 1965, when token integration was begun.[14] And not only were the schools segregated—thereby bringing into play the holding of *Brown v. Board of Education,* 347 U.S. 483, 495 (1954), that "[s]eparate educational facilities are inherently unequal"—but it appears that the Negro facilities have in fact been of appreciably inferior quality.

The United States introduced evidence which indicates the difference between white and Negro education in Gaston County.[15] The evidence is admittedly fragmentary in nature, but the conclusion is inescapable that porportionately less money has been spent on Negro education than on white. For example, the following chart shows the average annual salary for a white and a Negro school teacher for the years indicated:[16]

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[14]The evidence reveals that in Gastonia when, as a result of desegregation, 300 white students were zoned into a school with 300 Negro students, 297 of the white students were transferred out almost immediately.

[15]*See* Defendant's Exhibit No. 2, Excerpts from the Report of the Superintendent of Public Instruction of North Carolina, from which are derived all of the statistics which follow.

[16]Although Gaston County would have us direct our attention to its present efforts to equalize opportunities—for education as well as voting—we cannot close our eyes to the fact that the majority of

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missing

is credible evidence to establish that in April 1962 the number of voting precincts was increased for the convenience of the voters from 35 to 43; that the registration books have been kept open at the principal office of the County Board of Elections from 8:30 A.M. to 5:00 P.M., Monday through Friday[7]; and that registrars have been authorized—indeed encouraged[8]—to be available to register any qualified person at any reasonable hour each day of the week and, in addition, to be at the precinct voting place on designated Saturdays throughout the registration period.[9]

Additional evidence establishes that the adoption of the new system received considerable publicity through the mass media. Newspaper advertisements, radio announcements and placards explained the mechanics of the new system, the need for registration and the names and addresses of registrars for all of the precincts. These efforts, which were utilized with some success in the April 1962 registration campaign, were repeated in 1964 prior to the general election and were in fact enlarged to include letters distributed to the schoolchildren urging their parents to register to vote.

Plaintiff's evidence also established that these publicity efforts were fairly directed to all persons residing in the county, regardless of race or color, and that special conferences were held with Negro leaders for the specific purpose of obtaining their assistance in informing Negro citizens of where and when to register. Indeed, three of the five commissioners (or so-called deputy registrars) appointed during the April 1962 registration campaign to assist in registration were Negroes. Moreover, there is no evidence that any reg-

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[7]Such books, however, are required by North Carolina law to be closed for a period of 21 days prior to an election.

[8]Registrars are paid a general fee as established by North Carolina law and, in addition, receive a fee for each person they register.

[9]This requirement that the registrars be at the voting precincts on Saturdays was motivated by concern for the convenience of the voters of Gaston County and is wholly independent of and in addition to the requirements of North Carolina law generally.

istrar or member of the Board of Elections advised any Negro that he would be refused registration because of his race. It also appears that the Board of Elections did not receive any complaints from any Negro citizen that he had been denied his right to register because of a test or device.

In its post-trial brief, plaintiff contends that, given the above, it has satisfied its burden of proof and is therefore entitled to a declaratory judgment that no test or device has been used for a period of five years preceding the filing of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. Indeed, as plaintiff correctly points out, the Supreme Court, in interpreting the burden placed upon a plaintiff in a Section 4 case, has commented that the state or political subdivision "need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past five years * * *." *South Carolina v. Katzenbach*, 383 U.S. 301, 332 (1966).

But the Supreme Court does not stop there and neither can we. The statement quoted above continues: "and then refute whatever evidence to the contrary may be adduced by the Federal Government." *Ibid.* Accordingly, we must consider the evidence introduced and the arguments presented by the United States, bearing in mind the critical words of Section 4: "no such test or device has been used * * * for the purpose *or* with the effect of denying or abridging the right to vote on account of race or color." (Emphasis added.)

III.

The United States attempted to establish that the literacy test in Gaston County was used both "for the purpose" *and* "with the effect" of denying or abridging the right to register to vote on account of race or color. With respect to the former standard—"for the purpose"—the United States submitted the depositions of 29 illiterate or nearly illiterate whites who testified that they were registered to vote with-

out being required to demonstrate their literacy; indeed, 15 of these people testified that they affirmatively told the registrar that they could not read or write. In addition, the United States submitted a notebook of registration forms which indicates that the 29 persons mentioned above were not the only whites who were permitted to register although they were incapable of satisfying the literacy requirements of North Carolina law.

The United States seemingly admits that this waiver of the literacy requirement which resulted in the registration of a few whites, standing alone, does not necessarily establish that the literacy test was used in Gaston County for the purpose of denying or abridging the right to vote on account of race or color. The United States asserts, however, that this policy of waiver was not made public[10] so that Negroes justifiably believed that they would either be required to demonstrate literacy to the satisfaction of the registrar or be embarrassed by being turned away. To support this argument, the United States reminded this court of the purpose for which the literacy test was first adopted in North Carolina and the manner in which it has been applied since its inception.[11] The United States also introduced evidence showing that during the past five years Negro leaders

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[10]Indeed, although the paid advertisements of the Gaston County Board of Elections did not state that the literacy test was being enforced, there was considerable publicity, in the form of editorials and public interest stories, of the fact that election officials were enforcing the literacy requirements of North Carolina law, perhaps for the first time on a nondiscriminatory basis. Whatever this shows in the context of purposeful discrimination, such publicity does have significant ramifications with respect to the "effect" of such tests. *See* Note 21 *infra*.

[11]The adoption of the literacy test was discussed in the Raleigh News and Observer of January 14, 1900, in a story which carried the headline: "WHITE SUPREMACY MADE PERMANENT." The article explained that whites registered before 1908 would be exempted from the literacy requirement (grandfather clause), but that the test would be applied with respect to Negroes so as to "eliminate the baneful and ruinous influence of irresponsible negro suffrage."

refrained from encouraging illiterate Negroes to attempt to register and that several Negroes who did attempt to register were rejected because of their inability to read or write.

To rebut the Government's evidence and its inferences, Gaston County relies primarily upon the depositions of ten illiterate or nearly illiterate Negroes who were registered despite their admitted inability to comply with North Carolina's literacy requirement. In addition, Gaston County argues that even if the literacy test was used for the purpose of denying or abridging the right to register to vote on account of race or color, incidents of such use have been few in number so as to fall within the exception clause of Section 4(d). Insofar as we are here concerned with that language of the Act which speaks of purposeful discrimination, we must agree that the Gaston County Board of Elections has made commendable efforts to promote registration of all citizens residing in that county, irrespective of race or color. For the reasons hereinafter stated, however, we find it unnecessary to determine whether purposeful discrimination within the meaning of Section 4(a) has been practiced in Gaston County since April 1962.

IV.

Before proceeding to a discussion of the evidence adduced by the United States tending to show that the literacy test was used in Gaston County "with the effect" of abridging the right to register to vote on account of race or color, we believe it expedient to consider another argument of the United States based on the same evidence which was relied upon to establish purposeful discrimination. We refer now to the Government's contention that termination of the suspension of the literacy test in Gaston County would run afoul of Section 101(a) of the Civil Rights Act of 1964, 42 U.S.C. § 1971(a)(2)(A) (Supp. II 1965-66). That section provides that, in determining whether an individual is qualified under state law to vote in any federal election, no person acting under color of law may apply any standard different from or more stringent than the standards

which have been applied under such law to other individuals within the political subdivision who have been found qualified to vote. The United States argues that, according to this section, Gaston County may not deny registration to any person on the ground of illiteracy, irrespective of whether or not there has been racial discrimination, so long as illiterates remain on the registration rolls.

It is true that the chairman of the Gaston County Board of Elections testified that he believed that if the literacy test were reinstated the registrars would be bound by North Carolina law to enforce the letter and spirit of the state's literacy requirement. Moreover, he testified that he did not envision either a general reregistration of voters or a purging of illiterates so that if illiterates are presently registered, they will remain eligible to vote. Since there is evidence that in the past illiterates have been permitted to register, we could simply find that, unless the registration rolls are purged of all illiterates, Gaston County cannot, under Section 101(a) of the Civil Rights Act of 1964, reinstate its literacy test. However, since on the record before us we find that the literacy test has been used in Gaston County during the five years preceding the filing of this action "with the effect" of abridging the right to register to vote on account of race or color, we shall not rest on a theory which would be rendered irrelevant if the Gaston County Board of Elections were to decide to purge its rolls.

Moreover, during the hearings on the Voting Rights Act of 1965 before the Judiciary Committee of the House of Representatives, the Attorney General of the United States testified that suspending literacy tests was a more desirable approach than requiring a complete reregistration of all voters. He explained his position as follows:

> "To subject every citizen to a higher literacy standard would inevitably work unfairly against Negroes—Negroes who have for decades been systematically denied educational opportunity available to the white population.

> "Such an impact would produce a real constitutional irony—that years of violation of the 14th amendment right of equal protection through equal education would become the excuse for continuing violation of the 15th amendment right to vote."[12]

We believe that this statement goes to the heart of the problem we face today, particularly if reinstatement of the literacy tests were permitted, and requires us to find that, within the intendment of the Act,[13] the literacy test in Gaston County has been used with the effect of abridging the right to register to vote on account of race or color.

V.

The Supreme Court of North Carolina described the state statute requiring a demonstration of literacy as a prerequisite to registering to vote in these words:

> "* * * It demands more than the mere ability to write one's own name and to recognize and read a few simple words. * * * The standard or level of performance is the North Carolina Constitution. To be entitled

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[12]Hearings before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., p. 16 (1965).

[13]Both the Senate and the House of Representatives, in their reports accompanying the bill which eventually became the Voting Rights Act of 1965, speak to this issue and seemingly adopt the position of the Attorney General. Thus the Senate commented:

> "* * * [T]he educational differences between whites and Negroes in the areas to be covered by the prohibitions—differences which are reflected in the record before the committee—would mean that equal application of the tests would abridge 15th amendment rights. This advantage to whites is directly attributable to the States and localities involved." 131 Senate Reports, 89th Cong., 1st Sess., No. 162, Part 3, p. 16 (1965).

The House agreed:

> "* * * [E]ven fair administration of the tests, following decades of discrimination * * * would simply freeze the present registration disparity created by past violations of the [Constitution]. * * *" 162 House Reports, 89th Cong., 1st Sess., No. 439, p. 15 (1965).

> to register as an elector one must be able to read and write any section thereof. Admittedly, the standard is relatively high, even after more than a half century of free public schools and universal education.* * *" *Bazemore v. Bertie County Board of Elections*, 254 N.C. 398, 119 S.E.2d 637, 641 (1961).

If the standard is relatively high "even after more than a half century of free public schools," it must be much more difficult to attain for a person who has been denied the full benefits of such "universal education."

During the entire period when the persons presently of voting age were of school age, the schools in Gaston County were segregated; indeed, those schools remained totally segregated until 1965, when token integration was begun.[14] And not only were the schools segregated—thereby bringing into play the holding of *Brown v. Board of Education*, 347 U.S. 483, 495 (1954), that "[s]eparate educational facilities are inherently unequal"—but it appears that the Negro facilities have in fact been of appreciably inferior quality.

The United States introduced evidence which indicates the difference between white and Negro education in Gaston County.[15] The evidence is admittedly fragmentary in nature, but the conclusion is inescapable that porportionately less money has been spent on Negro education than on white. For example, the following chart shows the average annual salary for a white and a Negro school teacher for the years indicated:[16]

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[14]The evidence reveals that in Gastonia when, as a result of desegregation, 300 white students were zoned into a school with 300 Negro students, 297 of the white students were transferred out almost immediately.

[15]*See* Defendant's Exhibit No. 2, Excerpts from the Report of the Superintendent of Public Instruction of North Carolina, from which are derived all of the statistics which follow.

[16]Although Gaston County would have us direct our attention to its present efforts to equalize opportunities—for education as well as voting—we cannot close our eyes to the fact that the majority of

YEAR	WHITE	NEGRO
1908-09	$ 225.28	$ 91.17
1918-19[17]	566.90	113.64
1928-29	1,053.04	508.52
1938-39	933.97	681.07
1948-49	2,331.01	2,324.91

Below are the figures for the same years of the value of school property per pupil:

YEAR	WHITE	NEGRO
1908-09	$ 12.97	$ 3.90
1918-19	58.84	12.74
1928-29	181.03	66.20
1938-39	165.28	74.71
1948-49	278.39	99.60

The value per classroom was also significantly greater for white than for Negro students:[18]

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today's voters or potential voters were schoolchildren in 1948, 1938, 1928 and even 1918 and 1908. More specifically, according to the Bureau of the Census, 73% of the Negroes of voting age in 1966 would have been enrolled in school, if at all, prior to 1948-49 and 35% of the Negroes of voting age would have been of school age prior to 1918-19. *See* Special Censuses of Selected Counties in North Carolina, 1966 and 1965, p. 8 (Bureau of the Census, Series P-28, No. 1412, May 13, 1966). Since the Negroes' education thus dates back in many instances to 50 or more years ago, we deem it proper and appropriate, in analyzing their present ability to satisfy a literacy requirement, to turn back the clock accordingly. We have not presented the relevant data after the 1948-49 school year, since children entering schools in the 1950's were ineligible on account of age to vote during the five years preceding the filing of this action.

[17] North Carolina teachers were not uniformly certified before 1919, but at that time only 40% of the white teachers were unable to qualify for the lowest state certificate whereas almost 80% of the Negro teachers failed to meet this minimum standard.

[18] The evidence also shows that in the earlier years Negro schoolhouses tended to be constructed of wood whereas white schoolhouses were built of brick, and that in white schools the pupils had desks rather than the benches provided Negro pupils.

YEAR	*WHITE*	*NEGRO*
1928-29	$6,021.24	$2,464.61
1938-39	4,346.58	1,967.25
1948-49	7,765.56	2,618.65

Assembling the same figures in a slightly different fashion, the following chart shows the percentage of the total elementary and secondary school budget for the items indicated which was directed to the Negro school population. The figures in Columns (3) and (4), showing what percentage of the money allocated to *all* teachers and school property was allocated for Negro teachers and property, should be compared with the figure in Column (2) which represents the percentage of those persons enrolled in school who are Negro.

(1)	(2)	(3)	(4)
YEAR	*NEGRO PUPILS*	*SALARIES FOR NEGRO TEACHERS*	*VALUE OF NEGRO SCHOOL PROPERTY*
1908-09	25.5%	10.1%	9.3%
1918-19	21.7%	3.9%	5.6%
1928-29	16.0%	7.6%	6.5%
1938-39	17.2%	14.2%	8.6%
1948-49	16.1%	16.4%	6.4%

A reasonable man might anticipate that this disparity between the expenditures for white and Negro pupils would manifest itself in statistics on the respective educational levels attained by the two groups. Such a man would not be disappointed. In Gaston County, according to the 1960 report of the Bureau of the Census, *U.S. Census of Population: 1960*, Vol. I, *Characteristics of the Population, Part 35, North Carolina*, pp. 35-252 and 35-287 (1963), 3.2 per cent of the whites over 25 years of age have had no schooling whereas the corresponding figure for Negroes is 6.5 per cent, more than double the white figure. The Census figure for four or less years of education are: 17.4 per cent of the whites over 25 and 30.1 per cent of the Negroes over 25.

Indeed, if we look at these statistics from a slightly different angle and use the presumption of literacy embodied in the Civil Rights Act of 1964, that is, a sixth-grade education, we find that 66.4 per cent of the adult whites have received "advanced" education whereas only 51.7 per cent of the adult Negroes have gone beyond the sixth grade level.

These and similar statistics support the contention of the United States that Negroes of voting age in Gaston County were, as children, denied a public education equal to that provided white children. Indeed, the education provided many Negroes hardly reached the literacy level.[19] Conse-

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[19] One of the six witnesses called by Gaston County was Mr. Thebaud Jeffers, principal of the Negro high school in Gastonia. His testimony was in part as follows:

> Q. Mr. Jeffers, do you have an opinion as to whether or not the schools in 1932 had sufficient facilities and were equipped to teach a person to read and write well enough to be able to pass that test or to write any portion of the words of the three sentences that you see there?
>
> A. The Negro schools have been basically concerned—I mean in the early years—with teaching reading, writing and arithmetic.
>
> All of our schools, just about—I think all of them would have been able to teach any Negro child to read and to write so that he could read a newspaper, so that he could read any simple material that didn't have any foreign words or words of foreign extraction in them.
>
> This has always been true and I don't think that this was ever an argument anywhere, except that maybe the facilities were different.
>
> But they have been basically able to teach this and this is what they have done.
>
> Q. Yes. It is your opinion then that this test could be just copied or written as was required prior to the time we were placed under the '65 Voting Rights Act?
>
> Is that your opinion that a person could do that or—
>
> A. Yes, I am certain.
>
> Q. The schools were sufficient so they could do that?
>
> A. Yes, sir.
>
> Q. All right, sir.

Gaston County relies on this testimony as proof that the educational facilities, albeit segregated, were of sufficient quality to enable Negroes

quently, we must conclude that, in addition to denying Negroes equal educational opportunity as a matter of law through racial segregation, Gaston County has also denied Negroes that same opportunity as a matter of fact. Moreover, since Gaston County has not refuted any of this evidence, *South Carolina v. Katzenbach, supra,*[20] we must agree

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to pass the literacy test. We do not agree. Not only is the testimony itself unpersuasive, but Mr. Jeffers came to Gaston County in 1932 and his knowledge therefore dates only from that time. In addition, in this area the cold statistics and the testimony of persons actually enrolled in the schools during the past 50 years speaks louder than mere contemporary conclusions from interested witnesses.

[20] As noted above in text, the language of the Supreme Court is quite explicit: "[A]n area need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past five years, *and then refute whatever evidence to the contrary* may be adduced by the Federal Government." *South Carolina v. Katzenbach, supra* Note 5, 383 U.S. at 332. (Emphasis added.) The placing of the burden in a § 4(a) Voting Rights Act case could not be more emphatic—it lies squarely on the certified subdivision.

The concurring opinion is troubled by the fact that "no evidence has been adduced in this case to show that Negro schools in Gaston County were or were not giving their students the very elementary training necessary to pass the Gaston County literacy test"; "[t]here is no proof that had Gaston County Schools been integrated, more Negro children would have completed the fourth grade"; "[n]or has it been shown how segregated schools were responsible for the fact that more Negroes than whites in Gaston County attended no school at all." But the Government is not to be faulted for the failure, if any, of such evidence. Rather it is for Gaston County to prove that the segregated Negro schools *were* giving their students the very elementary training necessary to pass the literacy test; that more Negro children would *not* have completed the fourth grade if the schools had been integrated; or that segregated schools were *not* responsible for the fact that more Negroes than whites attended no school at all. The concurring opinion suggests that "[a] more logical inference from this data might be that economic necessity, not segregated schools, compelled the Negro child to participate in an income producing activity for his family at an earlier age, at the expense of formal education," but it is for Gaston County to suggest and support such inferences, not for this court. Gaston County would, of course, also have to

with the Government's position that any literacy test imposed upon Negroes as a precondition to voting would have the effect of abridging the right of many Negroes to vote on account of race or color.[21] This conclusion requires that Gaston County's application for a declaratory judgment that it has not used a literacy test during the five years per-

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show that the economic necessity was not itself the result of segregated education of the Negro parents.

Finally, the concurring opinion "agree[s] that a showing of a discrepancy in formal education between the races may in some circumstances indicate a potential discriminatory effect in the use of a literacy test." Although it taxes the United States with not going further and demonstrating that these "potential" effects are "actual" effects, we believe that the Government has satisfied its burden and that Gaston County has failed to prove that these "potential" effects are *not* "actual" effects.

[21] One of the Negro leaders testified that she had handpicked the persons they encouraged to attempt to register:

> Q. Which people did you pick to take up there to register?
>
> A. People that I thought could read.
>
> Q. Why did you just pick those?
>
> * * *
>
> A. Well, during that time you had to read the Constitution of the United States, so it was very embarrassing to have some one up there that couldn't read the Constitution and I knew that they would be turned down * * *.

We noted earlier that the fact that the literacy test was to be enforced received considerable publicity in the months that followed the April 1962 registration campaign. *See* Note 10 *supra*. Consequently, we have such testimony as follows:

> Q. Did you learn how to read and write?
>
> A. A little bit; not much.
>
> Q. Did you ever register to vote in Gaston County?
>
> A. No, I never did.
>
> Q. Did you ever try to register to vote?
>
> A. I didn't try.
>
> Q. Why was that?
>
> * * *
>
> A. After somebody told me I had to be educated. I knowed I couldn't read or write and that's why I didn't register.

ceding the filing of the action with the effect of abridging the right to register to vote on account of race or color must be denied.[22]

Justice as well as law dictate this result. It would be incongruous to allow a state or county to disenfranchise people for an inability to pass a literacy test, when that ability was denied them as a result of discriminatory state action.[23] Given the congressional purpose of the Voting

[22]We find no dearth of authority for the proposition that denial of equal educational opportunities to Negroes limits the discretion of a state or political subdivision with respect to its voting standards. *See* the dissenting opinion of Judge Brown, generally approved by the Supreme Court, in *United States v. State of Mississippi*, S.D. Miss., 229 F.Supp. 925, 990-993 (1964) (three-judge court), *reversed*, 380 U.S. 128 (1965). *See also United States v. State of Texas*, W.D. Tex., 252 F.Supp. 234, 241, 245 (three-judge court), *affirmed per curiam*, 384 U.S. 155 (1966). It is significant that in both of these pre-Voting Rights Act cases the Government had to bear the burden of proof, whereas in the instant case the burden rests with Gaston County. When one reads the opinions in these cases with this fact in mind, the conclusion is inescapable that there is ample authority for the approach utilized here. Finally, we find that there is nothing to preclude the result we have reached in *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 (1959), which upheld the constitutionality of the very literacy test in question here. In *Lassiter* Mr. Justice Douglas, speaking for the Court, stated:

> "Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot. *No such influence is charged here.* * * *" 360 U.S. at 53. (Emphasis added.)

[23]Plaintiff argues that to deny its application for declaratory judgment solely because the schools in its jurisdiction have been segregated is to attempt to do judicially what Congress chose not to do legislatively. This argument is premised on the following propositions: (1) Congress knew that the educational facilities of the South have been, and in many instances remain segregated; (2) Congress would not have provided in § 4(a) that a state or subdivision could terminate the automatic suspension of its test in less than five years unless Congress believed that a state or subdivision would in fact be able to establish to this court's satisfaction that it had not used its test for the purpose or with the effect of denying or abridging the right to

Rights Act of 1965, we do not believe it is within our power so to reward years of unconstitutional state action against its Negro citizens. Accordingly, the application of Gaston County for a declaratory judgment is

Denied.

/s/ J. Skelly Wright
United States Circuit Judge

/s/ Spottswood W. Robinson, III
United States Circuit Judge

Washington, D.C.
August 16, 1968

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vote on account of race or color. There is nothing in the language of the Act or its legislative history to support this argument.

For obvious constitutional reasons, the triggering mechanism of § 4(a) applies equally to all states and subdivisions and to all races. Thus Apache County, Arizona, Elmore County, Idaho, and the State of Alaska were covered by § 4(b), brought suit under § 4(a) to reinstate their tests, and obtained the judgments they sought. *See* Note 1 *supra*. Moreover, we do not rely solely on the fact that the schools in Gaston County have been segregated during the period when persons presently of voting age were of school age, but instead have reviewed the evidence adduced by the Government *in this case* and concluded that the Negro schools were of inferior quality in fact as well as in law. Our decision is thus not an "all encompassing rule" which binds every political unit presently certified under the Act despite "the merits of any case [it] might present." Concurring opinion p. 14.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

File date, August 18, 1968

[Caption Omitted in Printing]

GASCH, J., concurring in the result. Gaston County is a political subdivision of North Carolina, located in the Southern part of the State. The county seat of Gaston County is the City of Gastonia. As of January 24, 1966, approximately one-third of the County's population—45,429 out of 135,775 persons—lived in Gastonia. The remaining two-thirds lived in small towns in rural areas within the county.

A 1966 Special Census showed that 69,252 white persons and 8,407 Negroes of voting age lived within the County. Of these, 63.3 percent of the white persons (43,874) and 52.2 percent of the Negroes (4,388) were registered to vote in November, 1964. In the general election of November, 1964, only 37,326 people of those registered actually voted, a figure comprising more than 50 percent of the registered voters, but less than 50 percent of the voting age population. Of the registered Negroes, 68.95 percent (3,114) actually voted; of the registered white persons, 80.97 percent actually voted. Therefore, despite the fact that more than 50 percent of Gaston County's voting age population was registered to vote, Gaston County was certified under the Voting Rights Act of 1965. As a result of this certification, all literacy tests in the County were suspended. On August 18, 1966, Gaston County filed this suit in the United States District Court for the District of Columbia.

The majority opinion suggests that the evidence is inconclusive to prove that Gaston County deliberately and purposefully used its literacy test to deny to Negroes their rights to register and vote. I agree. Gaston County's regis-

tration practices do not present the kind of clear repressive discrimination against Negroes in the exercise of their franchise that the Act was designed to correct. There is no evidence in Gaston County of large pockets of qualified Negroes who have been discriminated against in their attempts to register and vote. Indeed, there is no evidence of *any* Negro who has been denied registration because of his race. Nor is there evidence of a large discrepancy between percentages of Negroes and whites who were registered to vote. Approximately fifty-two percent of voting age Negroes and sixty-three percent of voting age whites were registered to vote in 1964. There is evidence that some illiterate whites were allowed to register in the County. There is also evidence that some illiterate Negroes were registered. No general pattern or practice was shown.[1] On this record, it would be impossible to find that Gaston County used its literacy test for the purpose of discriminating against Negroes.

I do not concur that there is evidence to sustain the finding of the majority that the test was used with a discriminatory effect.[2] However, I concur in the result the majority reaches because, in my judgment, Gaston County has failed to meet a necessary element of its proof.

As a majority has pointed out, the Voting Rights Act added a new dimension to voting rights enforcement by presuming discrimination where a literacy test was used and where 50 percent of the voting age population was not registered or did not vote in 1964. In these circumstances, the state or political subdivision was required to rebut this presumption in order to reinstate literacy tests within its borders. The Government was thereby relieved of proving endless individual cases of discrimination in the slow and expensive avenues of court review.

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[1]The evidence offered was that 29 illiterate white persons and 11 illiterate Negroes were registered. Eighty-nine percent of those living in the county of voting age were white.

[2]See Part II, *infra*.

MISSING
PAGES

Q: You don't know whether they comply with the Voting Rights Act, do you?

A: To the best—I don't know. I just don't know. I just have to be honest with you. I have not checked.[6]

Certification of Gaston County under the Voting Rights Act suspended the literacy test for all elections within the County. A judgment for the County in this action would reinstate the literacy test for municipal registrars as well as all others in the County. The County has made no showing that a literacy test has not been used by municipal registrars in Gaston County in a discriminatory fashion. This failure of proof marks a fatal defect in its case. For this reason, I would deny declaratory relief under the Act and accordingly, I concur in the decision of the majority.

II.

The majority denies declaratory relief to Gaston County on the ground that inferior educational opportunities offered to Negroes in Gaston County's segregated schools places them at a material disadvantage to white persons in passing the Gaston County literacy test; therefore, the test has had a discriminatory effect against Negroes in registering and voting. While I accept the majority's assumption that the quality of education received by Negroes in Gaston County in segregated Negro schools was inferior to that received by white persons in white schools, I am not convinced that, *in the context of Gaston County's literacy test*, this evidence justifies an affirmative finding of a discriminatory effect.

The Gaston County literacy test, as amended in accordance with the Civil Rights Act of 1964, consisted of copying one of three sentences in a space provided under the sentence itself. (The test was orally administered before 1964.) The applicant had his choice as to which of the three sentences he wished to copy. To pass the test, he was

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[6]Transcript, pp. 142-44.

not required to spell each word correctly or even to write every word in the sentence, as long as he could print or write a reasonable facsimile of the sentence. He was not asked to interpret or explain the sentence to the registrar. And applicants were given as much time as they needed to complete the test. In some instances, this amounted to an hour or more. There is nothing to indicate that the pre-1964 oral test was administered with any more rigidity.

Given the very low level of competency required by the test, it is not at all clear that even the Negro schools in Gaston County did not provide adequate and sufficient training for Negroes to pass the test. It may well be that even though the Negro student received an inferior education, he was at least equipped to pass this simple test.

The point may be made by analogy. Assume two medical students of equal ability attended two different medical schools, one of which is significantly inferior to the other. As a result, one of the students received a much lower quality education than the other. Because of his inferior educational background, the one who graduated from the second-rate school would probably be at a disadvantage if the two were tested on their respective abilities to diagnose rare diseases, or perform a difficult operation. If the test considered merely of taking a pulse, or reading a thermometer, however, both might do equally well, despite the disparity in educational background. The latter tests are of such an elementary character that both schools would have provided sufficient training to enable their students to pass them.

Similarly, where schools are segregated, it may reasonably be assumed that at any given grade level, Negro students will be less prepared academically than their white counterparts. If Negro and white students are then asked to demonstrate an ability in creative writing, interpretation of language, or higher mathematics, the Negro, who attended inferior schools, would be at a material disadvantage. Where the test consists merely of reading or copying a

printed sentence, however, the quality of education each received is less significant in terms of the ability of each to pass it. Both might be prepared to score equally well on the simple test, even though, at the higher levels of achievement, the white student, by reason of his superior education, would be expected to do better.

The point to be made is that no evidence has been adduced in this case to show that Negro schools in Gaston County were or were not giving their students the very elementary training necessary to pass the Gaston County literacy test. Given the low level of achievement called for by the Gaston County test, I think such proof is essential to support the affirmative conclusion which the majority has reached, that the segregated education did in fact have a material impact on the respective abilities of Negroes and whites to pass the test.

To support its finding that there was such an impact, the majority has pointed out that the Gaston County public schools were legally segregated until 1965; and that the annual per-pupil expenditure at the Negro schools was consistently much smaller than that appropriated for the white schools. The majority also cites census data that proportionally fewer Gaston County Negroes than whites over age 25 attained at least a fourth grade education during the period the schools were racially segregated, and that more than twice as many Negroes as whites in Gaston County received no formal education at all. In my opinion, this evidence is insufficient to support the majority's case. There is no proof that had Gaston County schools been integrated, more Negro children would have completed the fourth grade. Nor has it been shown how segregated schools were responsible for the fact that more Negroes than whites in Gaston County attended no school at all. A more logical inference from this data might be that economic necessity, not segregated schools, compelled the Negro child to participate in an income producing activity for his family at an earlier age, at the expense of formal education.

Footnote 20 emphasizes that the burden of proof is upon the petitioner. It quotes from *South Carolina v. Katzenbach* and in pertinent part emphasizes that petitioner "refute whatever evidence to the contrary may be adduced by the Federal Government."

The critical question then arises: What evidence has the Government adduced that demonstrates that an educational test or device, *i.e.*, copying a single sentence, has the effect of denying or abridging the right to vote? Whatever weight may be accorded the respondent's cold statistics is, in my opinion, dispelled by the testimony of the petitioner's expert witness who expressed the unqualified and unchallenged opinion that the Negro schools prior to integration were sufficient to enable the students to pass the type of test required. There it is important to note that the present test is ability to copy a single sentence. We are not concerned with the prior test which is discussed in *Bazemore v. Bertie County Board of Elections*, 254 N.C. 398, 119 S.E.2d 637, 641 (1961). Likewise, we are not concerned with conditions in 1900 and attitudes represented therein.[7]

To summarize this point, I agree that a showing of a discrepancy in formal education between the races may in some circumstances indicate a potential discriminatory effect in the use of a literacy test.[8] But it is *actual* effects, not *potential* effects, that are proscribed by the Act. I do not feel that the evidence justifies a finding that educational disparities in Gaston County, when viewed in the light of the literacy test actually administered there, had an *actual* discriminatory effect on voter registration.[9]

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[7] See footnote 11 of the majority opinion.

[8] For example, where the test requires the registrant to explain the meaning of a section of the Constitution an inferior education could render the Negro at a real disadvantage, because of the high level of competency necessary to pass it.

[9] The majority opinion, in footnote 22, cites as support for the proposition that denial of equal educational opportunities to Negroes

Several consent judgments have been entered under the Voting Rights Act. One such judgment involved Wake County, North Carolina.[10] In the *Wake County* case, the

limits the discretion of a state or political subdivision with respect to its voting standards *United States v. State of Texas*, 252 F.Supp. 234 (W.D. Tex. 1966), *affirmed per curiam*, 384 U.S. 155 (1966). In that case, the court was asked to find a discriminatory effect in the use of a poll tax on the ground that Negroes, deprived of an equal educational opportunity, were less able to succeed financially and therefore less able to pay the tax required to vote. As the majority opinion is essentially a holding that Negroes, deprived of an equal educational opportunity in Gaston County, were less able to pass the test required to vote, I consider the two cases similar in theory. The court in the *Texas* case declined to find discrimination on the evidence submitted. The holding of that court precisely expresses my concern over the sufficiency of the evidence in the case at bar:

> "The evidence clearly shows, and the United States does not dispute, that as [sic] least during the last twenty years there has not been any attempt to use the poll tax overtly to deprive the Negro of his right to vote. Despite unlimited pretrial discovery, no instances of outright discrimination have been shown or alleged. In fact, the United States has relied primarily on evidence of discrimination in public education and the resulting economic disadvantages to establish that the poll tax is more of a burden upon the Negro than upon the white voter. Although we consider the United States' method of proof a legitimate means for reaching such a conclusion, the facts will not support a finding of racial discrimination. The figures most favorable to the United States' position indicate that of the eligible persons between the ages of 21 and 60, 57.3% of the whites and 45.3% of the Negroes pay their poll tax. It is to be noted that both of these figures, although not commendable in terms of the total electorate, are subtantial [sic] and that the difference between them is only 12%. If the disparity had been larger, we might have been more inclined to accept the evidence of a historical background of discrimination and the result of the poll tax sales as sufficient to justify a finding that the poll tax discriminates against Negroes. The disparity, however, is not glaring. Indeed, it is relatively small. The evidence points to other possible reasons for this difference." 252 F.Supp. at 245.

The factual parallel between the *Texas* case and the case at bar is highly significant, particularly regarding the absence of proof of outright discrimination and the similar percentages of Negroes and whites who were registered to vote.

[10] Civil Action No. 1198-66 (January 23, 1967).

Attorney General consented to a judgment that no test or device had been used in the past five years with the purpose *or effect* of denying or abridging the right to vote on account of race or color. Wake and Gaston are neighboring counties. The same State literacy test requirement applies to both. The census table on which the majority relies shows that proportionally fewer Negroes than whites in Wake County had fourth grade educations and that many more Negroes than whites had no schooling at all. These considerations lead this Court to strike down a literacy test in Gaston County, but they were not applied to deny Wake County use of its literacy test. Nor was any mention of segregated schools or discrepancies in Negro and white grade level attainment made in *Apache County, et al. v. United States*,[11] *State of Alaska v. United States*,[12] or *Elmore County, Idaho v. United States*,[13] the other consent judgments entered under the Voting Rights Act. The majority opinion seems, then, to impose a different and more difficult burden of proof in the case of Gaston County than the Department of Justice or this Court has applied to any other case under the Voting Rights Act.[14]

I am also concerned that the majority's opinion seems to preclude any showing by any Southern state or political

[11] 256 F.Supp. 903 (1966).

[12] Civil Action No. 101-66 (August 17, 1966).

[13] Civil Action No. 320-66 (September 22, 1966).

[14] One other case cited by the majority as support for the proposition that denial of equal educational opportunities may affect permissible voting standards is *United States v. State of Mississippi*, 229 F.Supp. 925 (S.D. Miss. 1964), *reversed*, 380 U.S. 128 (1965). In that action for injunctive relief, the United States sought to have registered "any Negro applicant who is over age 21, *able to read*, a resident for the period of time prescribed by state law, and not disqualified by state laws disfranchising the insane and certain convicted criminals." (See 380 U.S. at 135, emphasis supplied). While that case did not involve the statute under consideration here, the relief sought even in those aggravated circumstances should be considered as part of the context of the case.

subdivision to reinstate its literacy test before the five-year suspension period has expired. Because the decision of the majority in this case is so broad and so far-reaching, it will have the effect of disqualifying any political unit presently certified under the Act from obtaining a declaratory judgment before five years of suspension of its literacy test have elapsed. These units are not denied declaratory relief on the merits of any case they might present; they are now bound by an all encompassing rule, the soundness of which they had no opportunity to contest, which presents a burden of proof that will be impossible for them to meet.

From the President's Message to the Congress proposing the Voting Rights Act,[15] and the hearings[16] and floor debate[17] in the Congress, it is clear that the Voting Rights Act was primarily directed at the Southern states. In the Act, the Congress allowed a fair opportunity for a certified unit to rebut the presumption that its literacy test was used in a discriminatory manner. Thus, sections 4 and 5 of the Act provide a procedure whereby a State or political subdivision which has been the subject of a certification under the Act, may petition this Court for declaratory relief to reinstate its test before the five-year suspension period has elapsed. Sections 4 and 5 will provide no remedy to a Southern state, however, if, as the majority finds, a segregated school system coupled with census data showing higher literacy and education for whites than for Negroes, is sufficient to preclude recovery under the Act. We can take judicial notice that the segregated school system was the prevailing system throughout the South. If this were

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[15] 111 *Cong. Rec.* 4924 (daily ed. March 15, 1965).

[16] See generally, *Hearings on H.R. 6400 Before Subcommittee No. 5 of the House Committee on the Judiciary*, 89th Cong., 1st Sess., ser. 2, (1965); *Hearings on S. 1564 Before the Senate Committee on the Judiciary*, 89th Cong., 1st Sess., (1965).

[17] See generally, *Cong. Rec.*, 89th Cong., 1st Sess., (April 13 - May 26, 1965) (Senate); *Cong. Rec.*, 89th Cong., 1st Sess., (July 6 - July 9, 1965) (House).

what Congress had in mind, it would have stated that no test could be used where literacy was higher among whites than among Negroes. I do not believe that Congress intended that the Act be interpreted in such a way as to render §§ 4 and 5 inapplicable to Southern states or those which had segregated educational systems. To the extent the majority opinion reaches this result, it is not, in my judgment, in accord with the intent of Congress.

For the reasons hereinabove stated, I concur in the result, but not the grounds of decision of the majority.

OLIVER GASCH
Judge

Date: August 14, 1968

APPENDIX C

STATUTES INVOLVED IN APPEAL

Section 4(a), 4(b), 4(c) and 4(d) of the Voting Rights Act of 1965. 42 U.S.C. Section 1973 et seq. (Supp. II, 1965-66).

SEC. 4(a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose

or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November, 1964.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such

incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

ARTICLE VI, SECTION 4, of the CONSTITUTION OF NORTH CAROLINA.

4. Qualification for registration.—Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time thereto, entitled to vote under the laws of any state in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: Provided, he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section two of this article (Const. 1868; 1899, c. 218; 1900, c. 2, s. 4; Ex. Sess. 1920, c. 93.)

SECTION 163-28. GENERAL STATUTES OF NORTH CAROLINA, Vol. 3D.

163-28. Voter must be able to read and write; registrar to administer section.—Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section. (1901, c. 89, s. 12; Rev., s. 4318; C.S., s. 5939; 1927, c. 260, s. 3; 1957, c. 287, s. 1.)

MOTION TO AFFIRM

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 701

GASTON COUNTY, NORTH CAROLINA, APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States moves that the judgment of the district court be affirmed.

OPINION BELOW

The opinion of the district court (J.S. 9-40) is reported at 288 F. Supp. 678.

JURISDICTION

The opinion of the three-judge district court was filed on August 16, 1968. A notice of appeal was filed on September 13, 1968. The Jurisdictional Statement was filed October 31, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

326-970—68

QUESTIONS PRESENTED

1. Whether during the five years prior to the institution of this action, the use by Gaston County of a literacy test for voting registration had the purpose or the effect of denying or abridging the right of persons to register and vote on account of race.

2. Whether, in an action for declaratory judgment brought by Gaston County under Section 4 of the Voting Rights Act of 1965, 42 U.S.C. 1973b, the county must establish that, during the five years immediately preceding the filing of this action, no registration official operating within its territorial limits engaged in practices which had the purpose or effect of violating the Fifteenth Amendment.

STATEMENT

Section 4(a) of the Voting Rights Act of 1965, 42 U.S.C. 1973b(a), which took effect on August 6, 1965, suspended the use of literacy tests as a prerequisite for registration or for voting in any county or political subdivision previously maintaining such tests where fewer than 50 percent of the persons of voting age were registered for or voted in the 1964 presidential election.[1] On March 29, 1966, the Attorney General and the Director of the Census certified that a factual situation within this statistical standard existed in Gaston County, North Carolina (31 Fed. Reg. 5080–5081) and it thereby became subject to the suspension provisions of the Act.

On August 11, 1966, the County instituted this declaratory judgment action under the provision of

[1] The constitutionality of Section 4 was upheld by this Court in *South Carolina* v. *Katzenbach*, 383 U.S. 301.

Section 4(a) which terminates the suspension of literacy tests upon a finding by a three-judge district court in the District of Columbia that for five years preceding the filing of the action no test or device has been used in the plaintiff State or political subdivision for the purpose or with the effect of denying or abridging the right to register or to vote on account of race.

The evidence presented at the hearing before the three-judge court established the following facts:

(1) The North Carolina Constitution (Art. VI, § 4) provides that in order to register to vote a person must demonstrate ability to read any section of the state constitution in the English language. See, also, N.C. Gen. Stat. § 163-28. North Carolina law assigns to individual registrars the duty to enforce the literacy requirement. *Ibid.* Prior to July 1964, it was the Board's practice to give an oral reading test; applicants were required to read the registration oath aloud to the satisfaction of the registrar. After the effective date of the Civil Rights Act of 1964—which prohibited the imposition of oral tests as a precondition for voting in a federal election—the Board changed its procedures and instituted a written literacy test. Applicants were required to copy, to the registrar's satisfaction, any one of three sentences from the North Carolina Constitution set forth on a written form prepared by the Board. In the spring of 1966, after the Attorney General and the Director of the Census had made the statutory determinations which placed

Gaston County under the Voting Rights Act, the Board suspended the use of all literacy tests.

(2) Gaston County is divided into 43 election precincts, each of which has its own registrar of voters. Registrars are appointed by the Gaston County Board of Elections, and this body is generally responsible for the administration of the electoral processes of the County. All federal, state, county and township elections are controlled by the County Board. There are also at least eleven municipalities in Gaston County which hold separate elections. Registration for these municipalities is conducted separately by municipal registrars. The County Board of Elections has no control over municipal elections. N.C. Gen. Stat. §§ 160-364, 160-365, 160-366, 163-31.3. The County offered no proof at all at the hearing with respect to the practices of the municipal registrars (see J.S. 32-33).

(3) Prior to 1962, registration in Gaston County was conducted under a "precinct registration" system. In 1962, a general re-registration was instituted, and the County inaugurated the so-called "loose-leaf system." During the course of the 1962 re-registration, the fact that the re-registration was to be conducted in accordance with the North Carolina literacy law was publicized in the press.

After the registration period began in April 1962, and despite the public announcement of the Board's policy to enforce the literacy requirement, white applicants were permitted to register without meeting the literacy requirement. Illiterate whites thereby registered and are still on the rolls in Gaston

County. No public announcement was made of the fact that the literacy requirement was frequently waived.[2]

(4) Evidence was also introduced to establish that racial segregation and discrimination based on color permeated most facets of life in the County for most of the County's Negroes of voting age. All of the voting-age Negroes attended schools at a time when the County public schools were racially segregated by law and the educational opportunities provided for Negroes were inferior to those provided for whites.

The court below denied the County's request for a declaratory judgment. A majority of the court (Judges Wright and Robinson) held that, irrespective of whether the North Carolina Constitution's literacy requirement was evenhandedly administered, it had the effect of discriminating on account of race because "Negroes of voting age in Gaston County were, as children, denied a public education equal to that provided white children" (J.S. 24). Accordingly, the court concluded that "*any* literacy test imposed upon Negroes as a precondition to voting would have the effect of abridging the right of many Negroes to vote on account of race or color" (J.S. 26, emphasis added). Judge Gasch concurred in the result on the ground that the County had failed

[2] Accordingly, Negro leaders active in voter registration basing their conclusions on what they observed or, in one case, following the explicit direction of a registrar, confined their registration efforts to persons who could read and write; and there was evidence that Negroes of low literacy did not attempt to register because they thought they would fail the test.

to meet its burden of proof that *all* elections held within the County—including the independently supervised municipal elections—had been conducted nondiscriminatorily (J.S. 29–33).

ARGUMENT

1. The majority of the court below properly concluded that a literacy test requiring the copying of a sentence from the North Carolina constitution had the effect of discriminating against Negro applicants in a county where the census figures showed the percentage of adult Negroes having no schooling whatever was twice as large as the corresponding percentage of whites, where the percentage of adult Negroes having no more than four years of education was almost twice as large as that of whites, and where the Negro schools had been substantially inferior to the white schools during the period in which the County's voting age citizens were of school age. Since the evidence also showed that the quality of the Negro schools, during much of this period, was very poor indeed, the court justifiably inferred that *any* literacy test administered in these circumstances would have the effect of discriminating on account of race.

The existence of inferior educational opportunities for Negroes in the Southern states was one of the considerations behind the congressional suspension of literacy tests.[3] It was the view of the Attorney General and of Congress that it was unfair to allow a State or county to disfranchise people for a lack

[3] See, *e.g.*, Hearings on H.R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., pp. 16–17 (Attorney General Katzenbach).

of capacity to pass a literacy test, when that capacity was denied them as a result of discriminatory state action (see J.S. 27). Twelve of the sixteen members of the Senate Judiciary Committee stated:

> [T]he educational differences between whites and Negroes in the areas to be covered by the prohibitions—differences which are reflected in the record before the committee—would mean that equal application of the tests would abridge 15th amendment rights. This advantage to whites is directly attributable to the States and localities involved.[4]

There is no merit to the claim that the evidence below was inadequate to support the majority's conclusion in this regard. For, as the majority opinion noted (J.S. 25, n. 20), the burden of proof in an action of this kind rests with the political subdivision seeking to have the suspension removed. In this case, the County failed to establish that the standard of the literacy requirement was so low that it could be satisfied even by those who received the inferior education given Negro children in segregated schools.

2. Affirmance of the judgment below may also be reached on the ground articulated by the concurring judge. It was incumbent on the County, as a part of its case, to make a showing that the literacy test has not been used by municipal registrars with the purpose or effect of abridging the right to register and vote on account of race or color. The County offered no such proof.

At the trial, the County's witnesses disclaimed all knowledge of, or responsibility for, municipal elections

[4] S. Rep. No. 162, Part 3, 89th Cong., 1st Sess. p. 16.

and offered no proof with respect to them. They took the position that since municipal elections are not subject to the control of the Gaston County Board of Elections, such proof could not be required from the plaintiff. The statute, however, provides for suits by the County, and not by its Board of Elections. The relief would also extend to municipal elections, as well as to those conducted by the County's Board of Elections. Hence it was obligatory for the County to join the municipal registrars as plaintiffs or to call them as witnesses with respect to their registration practices. Having failed to take any of these steps, Gaston County has failed to establish that it is a political subdivision "in" [5] which no proscribed test or device has been used. Denial of the request for declaratory relief was, therefore, proper.

3. While the court below did not ground its decision on the evidence that the test had not been applied as written (J.S. 18), it was established that white illiterates were permitted to register notwithstanding the literacy requirement [6] and that the waiver practice was not publicized. Such a selective waiver of the literacy requirement—originally designed to disfranchise Negroes [7]—if it is not communicated to the Negro

[5] Note also the use of the phrase "anywhere in the territory of such plaintiff" in a related context in another part of the same section of the Voting Rights Act. 42 U.S.C. 1973(a).

[6] In addition to the depositions of 29 illiterate white voters residing in 18 voting precincts located in all parts of the County, the record contains a notebook of copies of the applications for registration of approximately 70 additional white voters whose forms show that they were incapable of satisfying the literacy requirements of North Carolina law.

[7] See footnote 11 to the opinion of the District Court.

community, will, of course, tend to abridge the right of Negroes to vote. This effect is amply illustrated by the evidence here: Negroes did not go to register, and leaders did not encourage them to register, because they were unable to read and write; white illiterates were registered throughout the County.[8]

CONCLUSION

For the foregoing reasons, the judgment of the three-judge district court should be affirmed.

Respectfully submitted.

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DECEMBER 1968.

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[8] Section 101(a) of the Civil Rights Act of 1964, 42 U.S.C. 1971(a)(2)(A) also precludes the entry of a judgment which would permit the County now to reinstitute a literacy test. That statute provides that in determining whether an individual is qualified to register or to vote under a particular State law no registrar may apply any standard different from or more stringent than the standards applied under such law to other individuals who have been found qualified to vote. Since numerous illiterates, most of them white, were registered in Gaston County in the past and, in the absence of a total re-registration, remain eligible to vote; and since the responsible Gaston County official testified that no such re-registration is intended, Gaston County is precluded now from reinstituting its literacy test.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 701

GASTON COUNTY, a Political Subdivision of the State of North Carolina,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

PRELIMINARY STATEMENT

This case of first impression as to the application of Section 4(a) of the Voting Rights Act of 1965, 42 U.S.C. Section 1973b (Supp. II, 1965-1966) presents the questions whether Gaston County, a political subdivision of the State of North Carolina, during five years prior to August 18, 1966 had used a "test or device" within the meaning of Section 4(a) of the Voting Rights Act of 1965 (*supra*) for the purpose or with the effect of denying or abridging the right to register to vote or to vote on account of race or

color; whether a segregated educational system alone is sufficient to preclude a state or political subdivision thereof from using a literacy test to determine voter qualification; and whether a county political unit, which has no jurisdiction or control over municipal elections held within the county unit by virtue of state law, is required by Section 4(a) of the Voting Rights Act of 1965 to refute the presumption that literacy tests were used in a discriminatory manner in municipal elections.

Declaratory Judgment relief was sought by the Appellant pursuant to Section 4(a) of the Voting Rights Act of 1965. By opinions entered August 16, 1968 (A. 441) (Opinion of Circuit Judges Wright and Robinson), this relief was denied on the theory that Negroes of voting age in Gaston County, North Carolina, as children, were denied education equal to that provided White children. Consequently any literacy test imposed upon Negroes as a prerequisite to voting would have the effect of abridging the right of Negroes to vote on account of race or color. District Judge Gasch, in concurring opinion, but on a different theory, disagreed with the majority and declared there was no evidence to sustain the conclusion reached by the majority.

The concurring opinion (A. 461) (Opinion of District Judge Gasch) was based on the theory that Appellant failed to show an absence of discrimination in municipal elections within Gaston County.

This appeal affords this Court an appropriate opportunity to declare whether Appellant used a "test or device" with the effect of denying or abridging the rights of its citizens to register to vote on account of race or color; whether the fact that a state or political subdivision thereof had unequal educational systems, and whether that fact alone is sufficient to deny relief under the Voting Rights Act of 1965; and whether a county unit must show absence of discrimination in municipal elections even though the county unit has no control or jurisdiction over such municipal elections by virtue of state law.

CITATIONS TO OPINIONS BELOW

The majority opinion of the statutory Three Judge Court, convened pursuant to 28 U.S.C. 2284 (Opinion of Circuit Judges J. Skelly Wright and Spottswood W. Robinson, III) (A. 441) and the concurring opinion of District Judge Oliver Gasch (A. 461) are reported in 288 F. Supp. 678, 690 (1968). The majority opinion of Circuit Judges Wright and Robinson is set forth at (A. 441) and the concurring opinion of District Judge Gasch at (A. 461).

JURISDICTION

This action was instituted on August 18, 1966, in the United States District Court for the District of Columbia for a declaratory judgment pursuant to the Voting Rights Act of 1965, 42 U.S.C. Section 1973 *et seq.* (Supp. II, 1965-1966). Trial of the action was held on June 21 and 22, 1967, before the statutory Three Judge Court consisting of Circuit Judges J. Skelly Wright, Spottswood W. Robinson, III and District Court Judge Oliver Gasch.

On August 16, 1968, an opinion was filed by Circuit Judges Wright and Robinson denying Appellant's motion for declaratory judgment (A. 441). On August 18, 1968, an opinion concurring in the results was filed by District Judge Gasch but on different grounds (A. 461).

Notice of appeal to the Supreme Court of the United States was filed with the Clerk of the United States District Court for the District of Columbia on September 13, 1968. Jurisdiction of this Court to review the decision of the Three Judge Court for the District of Columbia is conferred by Section 4(a) of the Voting Rights Act of 1965, 42 U.S.C. Section 1973 *et seq.* (Supp. II, 1965-1966).

Probable jurisdiction was noted on January 13, 1969.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Section 4(a), 4(b), 4(c) and 4(d) of the Voting Rights Act of 1965, 42 U.S.C. Section 1973b *et seq.* (Supp. II, 1965-66).

SEC. 4(a) - To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under sub-section (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose

or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November, 1964.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any manner, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State

or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

2. Article VI, Section 4, of the Constitution of North Carolina.

Sec. 4. Qualification for registration - Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any state in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: Provided, he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section two of this article (Const. 1868; 1899, c. 218; 1900, c. 2, § 4; Ex. Sess. 1920, c. 93.)

3. Section 163-28. General Statutes of North Carolina, Vol. 3D.

SEC. 163-28. Voter must be able to read and write; registrar to administer section.—Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section. (1901, c. 89, § 12; Rev., § 4318; C.S., § 5939; 1927, c. 260, § 3; 1957, c. 287, § 1.) (Recodified in 1967 as Sec. 163-58)

QUESTIONS PRESENTED

1. Whether Gaston County, a political subdivision of the State of North Carolina, during five years prior to institution of this action on August 18, 1966, had used a literacy test for the purpose or with the effect of denying or abridging the right of its citizens to register to vote or vote on account of race or color?

2. Whether a denial of equal educational opportunity alone is sufficient to preclude a state or political subdivision thereof from using a literacy test to determine voter qualifications?

3. Is a county political unit, which has no jurisdiction or control over municipal elections held within the county unit by virtue of state law, required by section 4(a) of the Voting Rights Act of 1965 to refute the presumption that literacy tests were used in a discriminatory manner in municipal elections?

STATEMENT OF THE CASE

On March 29, 1966, the Attorney General of the United States determined that a "test or device" within the meaning of the Act was maintained within the territory of Gaston County on November 1, 1964. This determination was made after the Director of the Census had determined that fewer than fifty per cent of the persons of voting age residing in Gaston County voted in the presidential election of November, 1964. As a result, the use of the written literacy test in Gaston County was suspended. Thereafter, this suit was brought to terminate the suspension of its test or device for the simple reason that Gaston County has not, within five years prior to August 18, 1966, used a test or device discriminatory in purpose or effect.

Gaston County, a political subdivision of the State of North Carolina, instituted this action on August 18, 1966, in the United States District Court for the District of Colum-

bia pursuant to Section 4(a) of the Voting Rights Act of 1965 seeking a declaratory judgment that, during the past five years, no "test or device" had been used for the purpose or with the effect of denying or abridging the right to register to vote or to vote on account of race or color.

On August 16, 1968, Circuit Judges Wright and Robinson filed an opinion (A. 441) denying the relief requested on the theory that Negroes, as children, were denied equal education with that of White and consequently any literacy test imposed upon Negroes as a prerequisite to register to vote would have a discriminatory effect.

On August 18, 1968, District Judge Gasch filed an opinion in which he disagreed with the theory on which the majority based its decision (A. 461). He stated:

> "On this record, it would be impossible to find that Gaston County used its literacy test for the purpose of discrimination against Negroes." (A. 462).

Judge Gasch concurred in the denial of the relief sought, however, on the theory Appellant made no showing that a literacy test had not been used by municipal registrars in a discriminatory fashion.

From denial of the relief sought, Gaston County appealed to the Supreme Court of the United States.

ARGUMENT

I.

DID GASTON COUNTY, WITHIN FIVE YEARS PRIOR TO AUGUST 18, 1966, USE A "TEST OR DEVICE" FOR THE PURPOSE OR WITH THE EFFECT OF DENYING OR ABRIDGING THE RIGHT TO REGISTER TO VOTE OR TO VOTE ON ACCOUNT OF RACE OR COLOR?

Article VI, Section 4 of the Constitution of North Carolina and Section 163-28 of the General Statutes of North Carolina provide in pertinent part as follows:

"Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language." (A. 12) See *Lassiter v. Northampton County Board of Education*, 360 U.S. 45 (1959).

Pursuant to this section of the Constitution and the General Statutes of North Carolina and in order to comply with the Civil Rights Act of 1964, election officials in Gaston County adopted a written test as a prerequisite to register to vote. The test adopted was of the simplest form. The three shortest and simplest sentences in the North Carolina Constitution were selected. (A. 52). A potential voter was not required to write or print all three sentences, but only to write or print any one of them. The registrant was not asked to read or interpret the meaning of any word or sentence. In fact, the registrant was not required to write every word in the sentence selected, but only to produce a reasonable facsimile thereof. (A. 53).

The test used by Gaston County contained the following sentences from the North Carolina State Constitution (Pl. Ex. A; A. 52, 170):

(1) Art. IV, Sec. 17
Clerks of the Superior Courts shall hold their offices for four years.

(2) Art. VII, Sec. 8
No money shall be drawn from any county or township treasury, except by authority of law.

(3) Article VIII, Sec. 6
The seat of government in this State shall remain at the City of Raleigh.

Judge Gasch in his concurring opinion, recognizing the practicality of this test, had this to say:

"Given the very low level of competency required by the test, it is not at all clear that even the Negro schools in Gaston County did not provide adequate and sufficient training for Negroes to pass the test.

> It may well be that even though the Negro student received an inferior education, he was at least equipped to pass this simple test." (A. 466)

He also had this to say:

> "There is nothing to indicate that the pre-1964 oral test was administered with any more rigidity." (A. 466).

Justice Douglas, in *Lassiter v. Northampton County, supra,* referring to Art. VI, Sec. 4 of the North Carolina Constitution and G.S. 163-28, stated:

> "That seems to us to be one fair way of determining whether a person is literate, not a calculated scheme to lay springes for the citizen."

It was agreed that in April, 1962, the Gaston County Board of Elections, pursuant to North Carolina Law, adopted a new system of voter registration known as a permanent loose-leaf system, which required a general registration of all voters in Gaston County. For this reason, every person now eligible to vote in Gaston County in Federal, State or County elections, has become registered to vote during or since April, 1962. (A. 13). Consequently, the relevant period for purposes of this suit would involve registration activities since April, 1962, even though the period would ordinarily be for five years preceding the filing of the action, or from August 18, 1961. It was also agreed that from April, 1962, to the effective date of the Civil Rights Act of 1964 oral literacy tests were used, that such tests were replaced by written tests after that date.

Appellant's evidence in this case shows clearly that upon adoption of the new system of registration every possible effort was made by election officials to publicize the fact that a new registration system was being put into effect in Gaston County and in order to be eligible to vote the potential voter would be required to re-register. Appellant was one of approximately 15 counties out of 100 counties to adopt the modern loose-leaf system. (A. 63). The publicity

given to the new system was directed to all citizens without any thought of race or color.

Beginning on April 21, 1962, the number of voting precincts in Gaston County were increased from thirty-five (35) to forty-four (44) for the convenience of voters and to provide additional places for citizens to register. (A. 17). The registration books were kept open after May, 1962, at the principal office of the County Board of Elections from 8:30 A.M. to 5:00 P.M. Monday through Friday of each week throughout the year, except twenty-one (21) days prior to an election as provided by State law (A. 20, A. 51). Attention is directed, however, to the fact that from April 21, 1962, to the primary in May, 1962, and prior to May, 1962, a person could only register on any one of three Saturdays and any time during the fifteen days between the three Saturdays (A. 44, A. 51). In addition to being permitted to register from 8:30 A.M. to 5:00 P.M. Monday through Friday of each week at the principal office of the County Board of Elections, any person could register with the registrar of the precinct in which he or she resided at any reasonable hour of each day of each week except for a period of twenty-one days prior to an election (A. 51).

When the new system of registration was adopted, schools were conducted for registrars to instruct them as to proper procedures for permitting applicants to register and to achieve a uniform system of registration in all forty-four voting precincts (A. 19). After use of the oral test was abolished by the Civil Rights Act of 1964, registrars of the forty-four voting precincts were again instructed by the Chairman of the Board of Elections as to proper and lawful procedures to follow in permitting applicants to register (A. 53). Each registrar was instructed that "they should not require an applicant to spell each word exactly or even to be able to write every word in the sentence." (A. 53). L. B. Hollowell, Jr., chairman of the County Board of Elections, testified: "The purpose was not to prevent anyone from registering unless we had no choice under the State

Law." (A. 53). The literacy test used in Gaston County, as its evidence clearly establishes, was designed to comply with the state constitution and laws, and not as a method of disenfranchising Negroes.

News media gave extensive coverage by editorials and news reports to citizens of Gaston County explaining the new registration system and informing the public in general where and when they could register. Spot announcements were purchased through local radio stations urging citizens to register (A. 20). Paid advertisements were obtained in newspapers in 1962, 1964 and 1966 showing precinct maps, names of registrars in all precincts, precinct numbers, home addresses of registrars and telephone numbers of registrars, in order to inform the citizens of the County where and when they could register to vote. (Pl. Exs. G through Z and AA through GG, A. 170; A. 20, 21, 56, 57, 58)

Prior to the primary election in May, 1962, five (5) registration commissioners or deputy registrars, three of whom were Negroes, were appointed to assist citizens to register. (A. 22). The deputy registrars could register voters anywhere in the County (A. 55), while the regular registrars could only register voters within their respective precincts. Prior to the general election in November, 1964, there were no regular Negro registrars in Gaston County. One Negro was appointed in 1965 in Precinct Number Seven, a predominantly Negro precinct in the City of Gastonia (A. 56).

In 1962 and again in 1964, the County Board of Elections distributed a letter to the students of all schools in the County for delivery to the parents, urging them to register to vote. In 1962, thirty-one thousand five hundred (31,500) such letters were distributed (A. 22). Thirty-four thousand (34,000) such letters were distributed in 1964 (Pl. Ex. D, A. 56, 57). Moreover, conferences were held with Negro leaders of the County seeking their assistance in informing the Negro citizens of where and when to register (A. 57). Negro leaders, prior to the general election in 1964, urged Negroes to register by announcements in the churches

(A. 99). As a special incentive to registrars, to encourage registration, each registrar was paid, in addition to the amount authorized by State Law, a fee for each person registered (A. 66).

The majority opinion of the Court below stated:

> "And that registrars have been authorized—indeed encouraged—to be available to register any qualified person at any reasonable hour each day of each week and, in addition, to be at the precinct voting place on designated Saturdays throughout the registration period." (A. 447) . . .
>
> "Plaintiff's evidence also established that these publicity efforts were fairly directed to all persons residing in the County, regardless of race or color, and that special conferences were held with Negro leaders for the specific purpose of obtaining their assistance in informing Negro citizens of where and when to register." (A. 447)

It seems rather inconsistent for the Appellant to do all these things referred to in the majority opinion on the one hand and then use the simple "test or device" for discriminatory purposes on the other. The Appellee stipulated as follows:

> "The Government finds no evidence that during the five years preceding the institution of this suit that any registrar of voters in Gaston County advised any Negro citizen that he or she would be refused registration because of his or her race." (A. 14)

Judge Gasch went so far as to say:

> "On this record, it would be impossible to find that Gaston County used its literacy test for the purpose of discriminating against Negroes." (A. 462)

II.

WHETHER A DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY ALONE IS SUFFICIENT TO PRECLUDE A STATE OR POLITICAL SUBDIVISION THEREOF FROM USING A LITERACY TEST TO DETERMINE VOTER QUALIFICATIONS

The majority denied declaratory relief on the ground that as a result of segregated educational systems Negroes in Gaston County were placed at a material disadvantage to Whites in passing the literacy test causing the test to have a discriminatory effect against Negroes in registering and voting. To support the decision, the majority cited certain census statistics and pointed out that Gaston County public schools were legally segregated until 1965 (A. 467). In spite of the statistics cited in the majority opinion, Judge Gasch stated that, in his opinion, the evidence was insufficient to support the majority's case (A. 467).

Appellant's evidence, however, dispels the conclusions reached by the majority. Statistics offered by the Appellant show that 69,252 White persons and 8,407 Negroes of voting age lived in Gaston County. Of these, 63.3 per cent of the White persons and 52.2 per cent of the Negroes eligible to vote in the general election in November, 1964, in the County were registered. In the general election in November, 1964, 37,326 people of those registered actually voted. Of the registered Negroes, 68.95 per cent of them actually voted in the general election in November, 1964, and 80.97 per cent of the registered Whites voted (A. 62). Even though these figures comprise fewer than 50 per cent of the voting age adults, more than 50 per cent of those registered actually voted. These percentages are far in excess of those cited in *South Carolina v. Katzenbach*, 383 U.S. 301, at page 313 (1966).

This evidence, along with that set out above, satisfies the burden of proof placed upon Appellant, and declaratory relief should be granted. "The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant." *South Carolina v.*

Katzenbach, supra. There is no evidence in the record of voting discrimination, flagrant or otherwise.

> "An area need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past five years, and then refute whatever evidence to the contrary may be adduced by the Federal Government." *Apache County, et al. v. United States,* 256 F. Supp. 903 (1966); *South Carolina v. Katzenbach,* 383 U.S. 301, 332 (1966).

The majority in the Court below held that Appellant did not refute the Government's evidence that literacy tests in Gaston County were used both "for the purpose" and "with the effect of denying or abridging the right to register on account of race or color." In regard to the matter of purposeful discrimination, the majority stated, however, that "Insofar as we are here concerned with the language of the Act which speaks of purposeful discrimination, we must agree that the Gaston County Board of Elections has made commendable efforts to promote registration of all citizens residing in that County, irrespective of race or color." (A. 450).

The majority then proceeded to discuss evidence of the United States pertaining to the words "with the effect." The opinion went on to say:

> "The United States introduced evidence which indicates the difference between White and Negro education in Gaston County. The evidence is admittedly fragmentary in nature, but the conclusion is inescapable that proportionately less money has been spent on Negro education than on White." (A. 453)

In spite of this admittedly fragmentary evidence, which, by the way, is the same type of statistical evidence offered by the Government but rejected by the Court in *United States v. State of Texas,* 252 F. Supp. 234, 241 (1966), *affirmed per curiam,* 384 U.S. 155 (1966), the majority reached the conclusion that Appellant has used the literacy test "with the effect" of denying or abridging the right to register to vote on account of race or color.

Appellant offered Mr. Thebaud Jeffers, a Negro who was a principal of a Negro high school in Gaston County prior to integration of the Gaston County public schools (A. 142). It is apparent from the record that Mr. Jeffers was an expert in his field. He came to Gaston County in 1932 and has been in the school system since that time. After showing the witness Pl. Ex. A containing the test used in Gaston County, he testified as follows: (A. 169)

> Q. "Mr. Jeffers, do you have an opinion as to whether or not the schools in 1932 had sufficient facilities and were equipped to teach a person to read and write well enough to be able to pass that test, or to write any portion of the words that you see there?" (A. 169)
>
> A. "All of our schools, just about,—I think all of them would have been able to teach any Negro child to read and to write so that he could read a newspaper, so that he could read any simple material that didn't have any foreign words or words of foreign extraction in them. This has always been true and I don't think that there was an argument anywhere, except that maybe the facilities were different. But they have been basically able to teach this and this is what they have done." (A. 169)
>
> Q. "Yes, it is your opinion then that this test could be just copied or written as was required prior to the time we were placed under the '65 Voting Rights Act? Is that your opinion that a person could do that or—" (A. 169)
>
> A. "Yes, I am certain." (A. 169)

The majority opinion in Footnote 19 (A. 456-457) stated that Gaston County relied on the testimony of Mr. Jeffers as proof that educational facilities in Gaston County, although segregated, were of sufficient quality to enable Negroes to pass the literacy test. It is true, Appellant did indeed rely on that testimony, but only as a part of its proof. Other witnesses and many exhibits were offered by Appellant to support its request for declaratory relief. In

Footnote 19 (A. 456-457) the majority said in regard to the testimony of Mr. Jeffers:

> "We do not agree. Not only is the testimony itself unpersuasive, but Mr. Jeffers came to Gaston County in 1932 and his knowledge, therefore, dates only from that time." (A. 457)

The testimony of Mr. Jeffers was completely disregarded by the majority even though, as stated by Judge Gasch:

> "Whatever weight may be accorded the respondent's cold statistics is, in my opinion, dispelled by the testimony of petitioner's expert witness who expressed the unqualified and unchallenged opinion that the Negro schools prior to integration were sufficient to enable the students to pass the type of test required. There it is important to note that the present test is ability to copy a single sentence." (A. 468)

Appellant contends that the statistical data used by the majority as a basis for the conclusion reached was never contemplated by the Act as a basis for denying declaratory judgment relief.

It is interesting to note that the Attorney General entered into several consent judgments granting relief to some certified units, one of which was *Wake County, North Carolina v. United States*, D.D.C. Civil Action No. 1198-66 (January 23, 1967). Wake County is a political subdivision of the State of North Carolina operating under the same school system as discussed in the majority opinion. Also, the literacy test requirement in Gaston County is the same required in Wake County. The effect of the majority opinion then is to place a greater burden on Gaston County than the Department of Justice or the Court has placed on other certified units.

In *United States v. Texas*, 252 F. Supp. 234 (W.D. Tex. 1966), *affirmed per curiam*, 384 U.S. 155 (1966) the Court refused to find that there was a discriminatory effect in the use of a poll tax on the theory that Negroes, because of a

segregated school system, were less able to succeed financially, therefore, less able to pay the poll tax required before being permitted to vote. The Court went on to say:

> "That figures most favorable to the United States' position indicate that of the eligible persons between 21 and 60, 57.3 per cent of the Whites and 45.3 per cent of the Negroes pay their poll tax. It is to be noted that both of these figures, although not commendable in terms of the total electorate, are substantial and that the difference between them is only 12 per cent. If the disparity had been larger, we might have been more inclined to accept the evidence of a historical background of discrimination and the result of the poll tax sales as sufficient to justify a finding that the poll tax discriminates against Negroes. The disparity, however, is not glaring. Indeed, it is relatively small. The evidence points to other possible reasons for this difference." *United States v. Texas*, 252 F. Supp. 234, 245 (1966), *affirmed per curiam*, 384 U.S. 155 (1966).

The special census of 1966 showed that 69,252 White persons and 8,407 Negroes of voting age lived within Gaston County. As already pointed out, 63.3 per cent of the Whites (43,874) and 52.2 per cent of the Negroes (4,388) were registered to vote in November, 1964. This is a disparity of only 11.1 per cent between the number of Negroes eligible to register and the number of Whites eligible to register. Following the theory of *United States v. Texas, supra*, it would seem that a difference of only 11.1 per cent between Negroes eligible to register and Whites eligible to register is not sufficient to justify a finding that discrimination in public education in Gaston County made it more difficult for Negroes to pass the literacy test than Whites.

To deny Appellant declaratory judgment relief on the grounds that its schools have been segregated is to attempt to do judicially what Congress chose not to do legislatively. In spite of all the testimony before the House and Senate Committees, including that of former Attorney General Kat-

senbach, Congress did not choose to abolish literacy tests in the dual school system states. In fact, Congress provided that if a test or device was used "for the purpose of with the effect" of denying or abridging the right to vote on account of race or color, but such incidents had been few in number and had been promptly and effectively corrected; the continuing effects of such incidents had been eliminated; and no reasonable probability of their recurrence in the future, no state or political subdivision would be certified. Judge Wright, in the majority opinion, states this section only applies in cases of purposeful discriminattion (A. 450). That portion of the Act also speaks of both "for the purpose *or with the effect*." (Emphasis added). Appellant contends that the percentage of Negroes eligible to register in 1964 in Gaston County (52.2 per cent) in itself as compared with 63.3 per cent of Whites is substantial evidence that incidents of use of a test or device in a disciriminatory fashion have been few in number, if any at all, in Gaston County.

Congress did not elect to suspend literacy tests in all areas where segregated school systems had flourished. Had it so intended, it would have so stated. The opinion of the majority, if allowed to stand, obviates any opportunity for reinstatement of literacy tests in any state that has had a dual educational system.

III.

DOES GASTON COUNTY, IN ORDER TO SUCCESSFULLY RESIST CONTINUED SUSPENSION OF ITS LITERACY TEST, HAVE THE BURDEN OF PROVING THAT ALL MUNICIPAL ELECTIONS WITHIN ITS BOUNDARIES ARE FREE FROM DISCRIMINATION EVEN THOUGH GASTON COUNTY HAS NO JURISDICTION OR CONTROL OVER MUNICIPAL ELECTIONS?

It is uncontested that there were eleven separate municipalities within the boundaries of Gaston County during the period of time in question. (A. 16). It is further uncontested that Gaston County had no jurisdiction or control

over any municipal elections held within the County During said period (A. 19, 82).

Gaston County agrees that the Voting Rights Act of 1965 is applicable to municipal elections, as stated in the concurring opinion of District Judge Gasch. However, Gaston County respectfully contends that the Director of the Census must first make the determinations required by Section 4(B) of the Voting Rights Act of 1965 as to the municipality or municipalities in question before said municipality or municipalities would become subject to the provisions of the Act. In the case at bar, the Director of the Census did not make such determinations as to any municipality within Gaston County.

Section 4(B) of the Voting Rights Act of 1965 states that the provisions of subsection (A) shall not apply to any State or political subdivision thereof *until* (emphasis added) the Attorney General determines that said State or political subdivision maintained a test or device on November 1, 1964 with respect to which "(2) The Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964 or that less than 50 per centum of such persons voted in the Presidential Election of November, 1964." The plaintiff specifically argues that the Director of the Census has not made the necessary determinations as required by Section 4(B) as to any municipality within Gaston County, which would place any of said municipalities under the Voting Rights Act of 1965. Obviously, the Act contemplates that a municipality is a political subdivision of a State since the Act does apply to municipalities. However, the determinations made by the Director of the Census in the 1966 Special Census by which Gaston County was certified under the Voting Rights Act of 1965 contains no reference or references whatsoever as to whether fewer than 50 per centum of the persons of voting age residing within the corporate limits of any municipality within Gaston County did or did not vote in the Presidential Election of November, 1964. Therefore, it would have been impossible for Gaston

County to ascertain which municipality within its borders, if any, had failed to vote 50 per centum of the persons of voting age within such municipality in the Presidential Election of 1964. It is also entirely possible that more than 50 per centum of the residents of voting age in all municipalities within Gaston County voted in the Presidential Election of 1964, and the reason that Gaston County did not have 50 per centum of its residents of voting age vote in that election was due to non-participation in the election by persons residing in the rural areas of the county. Certainly, the information pertaining to the participation in said election by residents of voting age within each municipality in Gaston County was readily obtainable by the Director of the Census. If Gaston County had jurisdiction and control of the municipal elections within its boundaries, there would be no reason for the Director of the Census to make the determinations required by Section 4(B) as to each municipality, which are political subdivisions of the State of North Carolina.

Furthermore, the legislative history of the Voting Rights Act of 1965 does not mention that a State or any political subdivision thereof has the burden of showing non-discrimination in an election over which it has no jurisdiction or control. Gaston County respectfully contends that in the absence of any such legislative history, a fair interpretation of the statutory requirement is that a State or any political subdivision thereof has the burden of showing non-discrimination only in elections over which it has jurisdiction or control. To hold otherwise would place an unreasonable and arbitrary burden of proof upon Gaston County or any other county that might seek relief from the Act which did not have jurisdiction over municipal elections within its borders.

CONCLUSION

Through the years, Gaston County has attempted to give every citizen the opportunity to register and vote. At great expense, it adopted a modern system of registration which is not widespread in the State of North Carolina. It did so in order to make it easier and more convenient for all its citizens to register. For many years, Negroes have held elective office in the City of Gastonia. The Human Relations Committee (A. 94) and other committees (A. 93) of like import were established to improve relations between the races. Schools have been integrated and no incidents of racial violence have occurred in the County. With a history of efforts of this type, together with the evidence in the record, the Appellant contends that it has presented a case which entitles it to declaratory judgment relief. Appellant respectfully requests this Court to reverse the ruling of the Court below and order that Gaston County be granted the relief prayed for in its complaint.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 701

GASTON COUNTY, NORTH CAROLINA, APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (A. 441–472) is reported at 288 F. Supp. 678.

JURISDICTION

The order of the three-judge district court denying declaratory relief was entered on August 16, 1968. A notice of appeal was filed on September 13, 1968, and the jurisdictional statement was filed on October 31, 1968. This Court noted probable jurisdiction on January 13, 1969 (393 U.S. 1011). Jurisdiction of this appeal rests on 28 U.S.C. 1253, 2284, and 42 U.S.C. 1973b(a).

QUESTION PRESENTED

Gaston County, North Carolina, became subject to the Voting Rights Act of 1965 in March 1966 and then ceased administering the State literacy test for voting registration. Although five years have not elapsed since the literacy test was applied, Gaston County is entitled to exemption from the interdictions of the Act if it can show that the use of the literacy test in the County during the five years preceding the filing of this suit had neither the purpose nor the effect of denying or abridging the right of Negro citizens to vote on account of their race.

The question presented is whether Gaston County has made that showing in light of (1) evidence of inferior and inadequate educational opportunities previously afforded Negroes now of voting age by the County school system, (2) evidence that many white residents now registered to vote in the County were not required to pass the literacy test, and (3) the failure of the plaintiff to make any submission with respect to the administration of the literacy test by the independent voting officials of several municipalities located within the territory of the County.

STATUTE INVOLVED

Section 4 of the Voting Rights Act of 1965 (42 U.S.C. (Supp. III) 1973b) provides in relevant part (emphasis added):

> (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure

to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, **unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color:** *Provided,* That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or

with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

STATEMENT

1. Section 4(a) of the Voting Rights Act of 1965 (42 U.S.C. (Supp. III) 1973b(a)) suspends the use of literacy tests—as well as all other "tests or devices" as defined in Section 4(c) of the Act (42 U.S.C. (Supp. III) 1973b(c))—as a prerequisite for voting registration or voting in any federal, state, local or other election in any state, county or other political subdivision which then used such a voting test and in which fewer than 50 percent of the persons of voting age were registered for or voted in the 1964 presidential election. On March 29, 1966, the Attorney General and the Director of the Census made the appropriate statutory certifications with respect to Gaston County (along with certain other North Carolina counties), and it became subject to the restrictions of the Act (31 Fed. Reg. 5080–5081; A. 12).[1] Section 4(a) fur-

[1] Although the Act became effective August 6, 1965, and the necessary certifications were promptly made with respect to the States affected as a whole, the application of the statute to individual counties—like Gaston County and other North Carolina counties—had to await the results of a special census.

ther provides, however, that the suspension of voting tests shall terminate if the United States District Court for the District of Columbia, sitting as a three-judge panel pursuant to 28 U.S.C. 2284, determines, in a declaratory judgment action brought against the United States, that no such test or device has been used within the state or political subdivision seeking exemption during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to register to vote or vote on account of race or color. That is the provision invoked here.[2]

This suit was brought by Gaston County on August 16, 1966. The complaint (A. 1–9) makes the requisite allegations as to nondiscriminatory use of a literacy test during the five years preceding the institution of this case (A. 5–6). The United States, in answering this complaint (A. 9–11), denied the material allegations and alleged that, during the period when the North Carolina literacy test was pur-

[2] It should be noted that a successful action for declaratory relief under Section 4(a) has other consequences besides allowing the plaintiff to reinstitute old voting tests—if there is no independent bar (see note 28, *infra*). Notably, the prohibition on new voting standards and procedures without prior judicial approval, imposed on covered states and subdivisions by Section 5 of the Act, is then lifted. See *Allen* v. *State Bd. of Elections*, Nos. 3, *et al.*, this Term, and companion cases, decided March 3, 1969; *Hadnott* v. *Amos*, No. 647, this Term, decided March 25, 1969. So, also, the government's authority to appoint federal examiners and observers under Sections 6 and 8 of the Act ceases with respect to a state or subdivision which has secured exemption pursuant to Section 4(a).

portedly in effect in Gaston County, many white citizens, including illiterates, had been permitted to register without being required to demonstrate their literacy. Reintroduction of literacy requirements, the government noted, would thus violate Section 101(a) of the Civil Rights Act of 1964, as amended in 1965 (42 U.S.C. 1971(a)(2)(A)) (ibid.).

The case was tried on June 21 and 22, 1967, before Circuit Judges Wright and Robinson and District Judge Gasch. On August 16, 1968, the court denied Gaston County's application for declaratory relief (A. 441–472). Judges Wright and Robinson, finding that "Negroes of voting age in Gaston County were, as children, denied a public education equal to that provided white children" (A. 456), concluded that (A. 457–458):

> * * * [I]n addition to denying Negroes equal educational opportunity as a matter of law through racial segregation, Gaston County has also denied Negroes that same opportunity as a matter of fact. Moreover, since Gaston County has not refuted any of this evidence, *South Carolina* v. *Katzenbach* [383 U.S. 301, 332], we must agree with the Government's position that any literacy test imposed upon Negroes as a precondition to voting would have the effect of abridging the right of many Negroes to vote on account of race or color.

Judge Gasch concurred in the result, reasoning that (A. 465):

> A judgment for the County in this action would reinstate the literacy test for municipal registrars as well as all others in the County.

> The County has made no showing that a literacy test has not been used by municipal registrars in Gaston County in a discriminatory fashion. This failure of proof marks a fatal defect in its case. * * *

2. Gaston County is a political subdivision of the state of North Carolina (A. 12). It is located in the southern portion of the state, west of the city of Charlotte, and it borders on the state of South Carolina. The county seat of Gaston County is the City of Gastonia. As of January 24, 1966—the date of the special census on the basis of which the County was placed under the Act—45,429 of the 135,775 inhabitants of Gaston County, or approximately one-third, resided in the City of Gastonia (Pl. Exh. GG). The remaining two-thirds of the inhabitants of the County resided in small towns and rural areas. The special 1966 census shows that there were approximately 69,252 white persons and 8,407 Negroes of voting age residing in the county (*ibid.*). In June 1967, 43,874, or 63.3 per cent of the white persons, and 4,388 or 52.2 percent of the Negroes, were registered to vote (A. 60).

The County is divided into 43 election precincts, each of which has its own registrar of voters (A. 12). The precinct registrars are appointed by the Gaston County Board of Elections, and this body is generally responsible for the administration of all federal, state, county and township elections (A. 12, 19). There are also at least eleven municipalities in Gaston County which hold separate elections (A. 39). Registration for these municipalities is conducted separately by

municipal registrars (see N.C. Gen. Stat. §§ 160–364, 160–365, 160–366, 163–31.3), and the County Board of Elections has no control over municipal elections (A. 39, 82–83).

North Carolina law provides that every person presenting himself for registration as a voter shall be able to read any section of the North Carolina Constitution in the English language (A. 12; N.C. Const., Art. VI., § 4; N.C. Gen. Stat. § 163–28). It has been the stated policy of the Gaston County Board of Elections to comply in all respects with these provisions (A. 27, 28).[3] Prior to July 1964, it was the Board's practice to give an oral reading test and applicants were required to read the registration oath aloud to the satisfaction of the registrar (A. 23). After the effective date of the Civil Rights Act of 1964, which prohibited the imposition of an oral test as a precondition for voting in a federal election, the Board changed its procedures and prepared a written literacy test for all purposes. Applicants were thereafter required to copy, to the registrar's satisfaction, any one of three sentences from the North Carolina Constitution set forth on a written form prepared by the Board (A. 50–52). In the spring of 1966, after the Attorney General and the Director of the Census had made the statutory determinations which placed Gaston County under the Voting Rights Act, the Board suspended the use of all literacy tests (A. 62–63).

[3] The United States demonstrated, however, that the actual practices of the various registrars have differed significantly from this stated policy, and that there has, over the years, been a widespread waiver of the literacy requirement for white persons (see *infra*, pp. 11–13).

In 1962 the County instituted a so-called "loose-leaf" system of registration and, in order to accomplish the changeover from the "precinct registration" system in effect until that time, the County conducted a general reregistration of all voters (A. 12–13, 16–19; see N.C. Gen. Stat. §§ 163–31.1, 163–31.2). During the course of the reregistration, the local press carried news stories which stated that "literacy, always a requirement for a voter is now being enforced for the first time," and quoted Mr. Mack Davis, then the Chairman of the County Board, as recognizing that this was hard on previously registered voters but that the Board had no lawful alternative (A. 13, 27–28; Govt. Exh. No. 5).

At the time of the 1962 reregistration, all of the registrars in the county system were white (A. 14, 29). In 1965, a Negro, Elsie Saunders, was appointed registrar of predominantly Negro Precinct No. 7 in Gastonia, but all of the other precinct registrars still are white persons (A. 14, 55). In addition, the Board appointed three Negroes as temporary deputy registrars in 1962 to assist in registration in Precinct No. 7 (A. 49, 111).[4] No Negro has ever been appointed a precinct registrar outside the City of Gastonia, or in any predominantly white precinct within the city (A. 14, 55).

[4] While these deputy registrars technically had county-wide jurisdiction (A. 36), it was in predominantly Negro areas in Gastonia that they actually performed their functions (A. 36). Registration in Precinct No. 7 is 82 percent Negro, and in all other precincts in the County it is overwhelmingly white (Govt. Exh. No. 15).

Even with reference to the enforcement of the literacy requirement, the registrars are vested with considerable discretion. Under North Carolina law that discretion includes, *inter alia,* matters such as determining what constitutes a satisfactory demonstration of literacy, who may be exempted from taking the test, and the efforts which should be made to encourage or facilitate registration (compare A. 248–249 with A. 303, 315).[5] In Gaston County, the individual registrars in fact enjoyed even greater discretion with respect to determining what constitutes sufficient literacy than is permitted under state law (A. 29, 31, 72, 75–76, 181–182, 185).

This sweeping discretion was exercised against a backdrop of racial separatism and white domination. During the entire period when the present voting-age population was being educated, the schools in Gaston County were racially segregated (A. 77, 161). In general, Negroes occupied an economic and social position subordinate to that of white persons, and there was very little social mingling between the races (A. 117, 183). The Ku Klux Klan was active in the rural areas of the County (A. 114, 129).

Both before and after the 1962 reregistration, and specifically during the five years predating the institution of this suit, literacy was not, in actual practice, a prerequisite to registration for white persons in Gaston County. Thus, the record reveals that after the reregistration period began in April 1962, and de-

[5] See *Bazemore* v. *Bertie County Bd. of Elections*, 254 N.C. 398, 119 S.E. 2d 637.

spite the public announcement of the Board's policy to enforce the literacy requirement, the registrars frequently ignored or waived the requirement in favor of white persons seeking to register.[4] Numerous illiterate white persons accordingly became registered to vote and are still registered voters in Gaston County. While the literacy test was frequently waived for white persons, no public announcement was made that this was the practice (A. 73). Members of the Negro community in Gaston County, both leaders and ordinary citizens, thus believed that the literacy test was being generally enforced, and therefore no effort was made to encourage illiterate Negroes to attempt to register (A. 110, 163, 314–315, 397, 409–410, 415–418). Indeed, some Negroes, including at least one who was active in voter registration work among Negroes, were told that it would be futile for illiterates to try to register (A. 314–315).

Although county officials failed to comply with their obligation under 42 U.S.C. 1974 to preserve records, and rejected applications have not been retained by them (A. 34), there is evidence that during the five years preceding the filing of this action a number of Negroes were rejected for registration on account of a lack of literacy by both county and municipal regis-

[4] The record contains the depositions of 29 illiterate white voters residing in 18 voting precincts located in all parts of the county (A. 172–178, 186–217, 225–296, 306–313) and a notebook of copies of the applications for egistration of approximately 70 additional white voters, whose forms show that they were incapable of satisfying the North Carolina literacy requirement; all of them were nonetheless registered to vote in Gaston County (Govt. Exh. No. 1).

trars (A. 109, 195, 317, 332–333, 393–394, 395–396, 411–413). While a few illiterate or nearly illiterate Negroes were registered to vote in overwhelmingly Negro Precinct No. 7 in Gastonia (A. 350–383, 428–440) and the evidence showed in general that the County Board made commendable efforts to facilitate registration in this precinct, there was no comparable showing with respect to registration practices outside Gastonia. The county's witnesses were generally without knowledge as to those practices (A. 109, 117, 128, 141), although they did attest to the fact that the racial situation outside Gastonia was not as favorable as that within the city (A. 114, 129).

While there are in Gaston County at least eleven municipalities which themselves control the registration processes for their residents, and which administered the North Carolina literacy requirement for persons seeking to qualify to vote in elections conducted under their auspices, appellant offered no evidence with respect to the registration practices of these municipal registrars. At the trial the Chairman of the County Board of Elections testified that he did not know whether the various municipal registrars considered themselves subject to the Voting Rights Act or were complying with it, and he stated that he had made no effort to acquaint himself with their practices or procedures (A. 82–83). There is, however, some evidence that at least one municipal registrar has refused to register illiterate Negroes since Gaston County was placed under the 1965 Voting Rights Act (A. 317, 393–394, 395–396).

3. The record reveals that the educational opportunities afforded to Negroes during the entire period when persons now of voting age were of school age were substantially inferior to those afforded to white persons in Gaston County. The statistics recited in Judge Wright's opinion (A. 453–456) demonstrate that the County spent significantly less money per capita for each Negro school child with respect to school and classroom facilities and teacher salaries in the pre-1948 period than for his white contemporaries.[7]

A comparison of the statistics as to the levels of educational attainment achieved by whites and Negroes also reveals significant disparities. The district court recites statistics taken from the 1960 census which indicate that twice as many Negroes as whites had no formal education, while 30 percent of the Ne-

[7] Fully 35 percent of the older Negro citizens of the county were attending schools in the pre-1918–1919 period (A. 454). The state's figures for that year show that 98 percent of the white teachers—168 out of 171—but only 5 percent of the Negro teachers—two out of 38—held state teaching certificates. The remaining 95 percent of the Negro teachers held second grade certificates, described in the Biennial Report of the State Superintendent for that year as "the lowest permit issued in the State * * * not a certificate in the proper sense, but merely a permit to teach until someone can be found who is competent to take the place." During this same period, 68 percent of the Negro children, but only 30 percent of the whites, attended one-room rural school houses in which pupils in all grades were taught simultaneously by one teacher. There are no figures on brick or frame structures in 1918, but the state report shows that ten years later, in 1928–1929, 38 of 48 rural schoolhouses for white children were of brick or stone, whereas all 24 rural schoolhouses for Negroes were wooden frame buildings.

groes as opposed to only 17 percent of the whites in the County had a fourth-grade education or less (A. 455–456). While one of appellant's witnesses, Mr. Thebaud Jeffers, principal of the "Negro" high school in Gastonia, testified that in his opinion the education provided at the inferior Negro schools was adequate to prepare the student to pass the North Carolina literacy test (A. 169), other witnesses conceded that the literacy test, even if leniently applied, placed a significant burden on the older Negro citizens of the County (A. 118–119, 132).

SUMMARY OF ARGUMENT

Arising within the context of the Voting Rights Act of 1965, which was designed after lesser expedients had failed to finally eliminate "the blight of racial discrimination in voting" (*South Carolina* v. *Katzenbach*, 383 U.S. 301, 308), this appeal focuses upon the question whether the recent use by Gaston County of a literacy test as a prerequisite for voting registration had the effect of abridging the right under the Fifteenth Amendment of the County's Negro citizens to vote. The district court concluded that Gaston County had failed to refute the government's evidence that the literacy requirement has had that effect. We seek affirmance of that judgment.

First (*infra*, pp. 18–24), we submit that the County must show more than the absence of an improper purpose on the part of its officials. The Voting Rights Act is result-oriented; its aim is to broaden the degree of Negro-citizen participation in the electoral processes

of the covered jurisdictions. It is directed at both the unequal administration of literacy tests and at the fact that such tests are designed to capitalize on the inferior education afforded Negroes now of voting age. If, by reason of lesser opportunities leading to levels of educational attainment below or only bordering on literacy, or by reason of the way in which registration officials administered and enforced the literacy requirement, the test has had a greater impact on Negro registration than white registration, the County is not entitled to removal from the Act's coverage.

Next (*infra*, pp. 24–30), we demonstrate that the district court correctly found that the inferior and inadequate educational opportunities previously afforded Gaston County Negroes now of voting age so burdened them with respect to their ability to perform equally in taking the literacy test that the use of that test as a precondition to voting during the statutory five-year period had the effect of abridging their right to vote on account of race. On this record, the conclusion is compelled that, because of state-imposed educational discrimination, the use of the literacy test made it more difficult for Negroes than whites to register; and, we submit, this had the necessary effect of reducing or abridging the right of Negroes to vote. This result is supported by the principle enunciated in the decisions of this Court construing the Fifteenth Amendment and adopted by the Congress as a justification for the enactment of Section 4 of the Voting Rights Act—that the state may not impose a condi-

tion upon the right to vote which by its own prior conduct it has made it more difficult for a racially distinct group to meet.

We then (*infra*, pp. 31–36) show that, notwithstanding the announced policy of conditioning registration on literacy, County registration officials, in the exercise of a broad delegation of authority to determine, *inter alia*, the individuals who are actually subjected to the literacy test and what constitutes a sufficient demonstration of literacy, routinely registered white illiterates while Negroes were led to believe that the literacy requirement was being adhered to strictly. Noting that the district court did not reach the problems raised by this practice and that this Court need not decide these issues in order to affirm the judgment below, we contend that waiver of the test for some registrants without effectively communicating the fact of that policy to Negroes had a discriminatory effect on the right of Negroes to vote.

Finally (*infra*, pp. 37–42), we argue that the language and legislative history of Section 4 of the Voting Rights Act demonstrate that the certification of Gaston County suspended the use of literacy tests for all elections within its borders. Gaston County offered no evidence as to the practices of the registrars of the municipalities located within its territory. Since a judgment in the county's favor would permit the reintroduction of literacy tests by municipal as well as county registrars, we contend that this lack of evidence constitutes a fatal failure of proof.

ARGUMENT

I. GASTON COUNTY'S ENFORCEMENT OF THE NORTH CAROLINA LITERACY TEST DURING THE FIVE YEARS PRECEDING THE FILING OF THIS ACTION HAD A DISCRIMINATORY EFFECT ON THE RIGHT OF ITS NEGRO CITIZENS TO VOTE

A. GASTON COUNTY WAS REQUIRED TO ESTABLISH THAT ITS PRIOR ENFORCEMENT OF A LITERACY TEST DID NOT HAVE THE EFFECT OF ABRIDGING THE RIGHT TO VOTE ON RACIAL GROUNDS

1. We begin with the admonition voiced by this Court in *Reynolds* v. *Sims*, 377 U.S. 533, 562, that when dealing with matters involving alleged infringements of the right to vote—that basic and essential political right preservative of all others,[8] the right which lies at the very core of our constitutional system[9]—careful and meticulous scrutiny is required. *Accord, Harper* v. *Virginia Bd. of Elections*, 383 U.S. 663, 667, 670. Restrictions on the franchise are not favored and the burden is on those who erect barriers to justify them with compelling reasons. And this applies equally to indirect restrictions. Nor is it enough that bad faith is absent. The right is not to be denied or abridged casually, or incidentally. See, *e.g.*, *Carrington* v. *Rash*, 380 U.S. 89, 96; *Harman* v. *Forssenius*, 380 U.S. 528, 542. Thus, here, the district court was following traditional principles in declining to limit its inquiry to evidence of purposeful discrimina-

[8] See *Yick Wo* v. *Hopkins*, 118 U.S. 356, 370; *Wesberry* v. *Sanders*, 376 U.S. 1, 17–18; *Katzenbach* v. *Morgan*, 384 U.S. 641, 652.

[9] See *Carrington* v. *Rash*, 380 U.S. 89, 96; *Reynolds* v. *Sims*, *supra*, 377 U.S. at 555.

tion directly aimed at abridging the Negro franchise.

This approach is fully applicable to the present controversy. The Voting Rights Act of 1965 was designed to enfranchise millions of citizens who had not been able to secure their Fifteenth Amendment rights under less far-reaching congressional enactments which preceded it. *South Carolina* v. *Katzenbach,* 383 U.S. 301, 308, 313–315. Implementing this broad purpose, Section 4 of the Act (42 U.S.C. 1973b) operates on an objective statistical formula to prohibit covered jurisdictions from applying any test or device—usually a literary test [10]—as a precondition for registration to vote in any election. The statute does provide an escape from the proscriptions of the Act for jurisdictions falling within the formula, but only upon a proper showing that the statistical presumption of discrimination [11] has no actual application to them.

In stipulating the showing a covered jurisdiction must make in order to relieve itself from the Act's proscriptions, Congress declared that the plaintiff state or political subdivision must establish that no test or device had been used during the five years preceding the filing of the action "for the purpose *or with the effect* of denying or *abridging* the right to vote on account of race or color" (42 U.S.C. 1937b(a)) (emphasis added). The phrasing of the provision, particularly the use of the words "effect" and "abridging", makes clear that a covered jurisdiction

[10] See Section 4(c) of the Act (42 U.S.C. 1973b(c)).

[11] See H. Rep. No. 439, 89th Cong., 1st Sess., p. 13; South *Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 330.

cannot escape Section 4's reach simply by showing the absence of deliberate discrimination during the pertinent five-year period. Thus, on the face of the statute, evidence of a course of conduct which has had the effect of abridging the right to vote on racial grounds, whether or not so intended, is sufficient to bar reinstitution of a literacy test. See *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 326; *United States* v. *Alabama,* 252 F. Supp. 95, 104, (M.D. Ala.); *Sellers* v. *Trussell,* 253 F. Supp. 915, 917 (M.D. Ala.)

2. This reading of the statute is compelled by the nature of the evil which the Voting Rights Act was designed finally to eliminate. *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 309, 315. Before deciding to adopt "sterner and more elaborate measures" such as the suspension of literacy tests (*id.* at 309), Congress "permissibly rejected" other alternatives, such as requiring of a complete reregistration of all voters (*Id.* at 334). Thus, Attorney General Katzenbach in his statement to the House Judiciary Committee formulated two principal reasons for suspending literacy tests rather than requiring a reregistration of voters, which explain the purpose and philosophy of the Act:

> To subject every citizen to a higher literacy standard would, inevitably, work unfairly against Negroes—Negroes who have for decades been systematically denied educational opportunity available to the white population.
>
> Such an impact would produce a real constitutional irony—that years of violation of the 14th amendment right of equal protection

through [un]equal education would become the excuse for continuing violation of the 15th amendment right to vote.

* * * * *

The second argument against such a re-registration "solution" is even more basic—and even more ironic. Even the fair administration of a new literacy test in the relevant areas would, inevitably, disenfranchise not only many Negroes, but also thousands of illiterate whites who have voted throughout their adult lives. Our concern today is to enlarge representative government. It is to solicit the consent of all the governed. It is to increase the number of citizens who can vote. What kind of consummate irony would it be for us to act on that concern—and in so doing reduce the ballot, to diminish democracy?

It would not only be ironic; it would be intolerable.[12]

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[12] Hearings on H.R. 6400 Before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., pp. 16–17 (hereinafter "*House Hearings*"). See also Hearings on S. 1564 before Senate Committee on the Judiciary, 89th Cong., 1st Sess., pp. 22–23 (Attorney General Katzenbach) (hereinafter "*Senate Hearings*"). Both houses of Congress, as the court below noted (A. 452, n. 13), indicated in the pertinent committee reports their apparent agreement with the position espoused by the Attorney General. Thus, the Senate noted that "the educational differences between whites and Negroes in the areas to be covered by the prohibitions * * * would mean that equal application of the tests would abridge 15th Amendment rights." S. Rep. No. 162, 89th Cong., 1st Sess., Pt. 3, p. 16 (1965) (hereinafter "Senate Report"). Similarly, the House stated that "even fair administration of the tests, following decades of discrimination * * * would simply freeze the present registration disparity created by past violations of the

Not only was Congress confronted with the fact of educational disparities which literacy tests were designed to capitalize upon; it was also well aware of the fact that such tests had been unfairly administered and were often coupled with devices specifically designed to allow whites of low literacy to escape a general ban on illiterate voters. *House Hearings,* p. 16; House Report, pp. 12–13; Senate Report, pp. 10–12; *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 311–315. Accordingly, the solution chosen—suspension of such tests and devices in states and political subdivisions with low voter registration or turnout—was one designed to eradicate "once and for all the chronic system of racial discrimination which ha[d] for so long *excluded so many citizens from the electorate* because of the color of their skins, contrary to the explicit command of the 15th amendment" (Senate Report, p. 2) (emphasis added). See *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 315. It is plain, then, that the Act's provisions are to be given a generous reading in order to achieve the basic congressional purpose. Cf. *Allen* v. *State Bd. of Elections,* Nos. 3 *et al.,* this Term, decided March 3, 1969.

"[Constitution]." H. Rep. No. 439, 89th Cong., 1st Sess., p. 15 (1965) (hereinafter "House Report"). In like vein, this Court noted in *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 334, that "Congress knew that continuance of the tests and devices in use at the present time, no matter how fairly administered in the future, would freeze the effect of past discrimination in favor of unqualified white registrants."

In sum, the Voting Rights Act is result-oriented.[13] Having fallen within the coverage formula of Section 4, and the presumption of discrimination that the formula embodies (see *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 330), Gaston County has a very heavy burden to carry in order to prevail in this action. It must show not only the absence of an improper purpose on the part of those of its officials who enforced the North Carolina literacy test, but also that, within the context of the educational opportunities available to its Negro citizens and the manner in which the literacy requirement was actually enforced, the test utilized until 1966 did not contribute to lim-

[13] We note that nothing this Court said in *Lassiter* v. *Northampton County Bd. of Elections*, 360 U.S. 45, a 1959 decision involving the North Carolina literacy test, is in conflict with the Voting Rights Act of 1965 or any of our present arguments (see A. 459, n. 22). While the Court there declined to declare the state statute unconstitutional on its face, it was careful to indicate that no issue as to "discrimination in the actual operation of the ballot laws of North Carolina" was before the Court (360 U.S. at 50). Moreover, as pointed out in *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 333, the Court in *Lassiter* specifically recognized that "a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot" (360 U.S. at 53). Indeed, almost in anticipation of the 1965 Act, the Court in *Lassiter* sanctioned only those standards relating to voting "which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed" (*id.* at 51). See also *Gray* v. *Sanders*, 372 U.S. 368, 379. While no improper utilization of literacy tests was charged in *Lassiter*, that is the crux of this case. Thus, the issue specifically reserved in *Lassiter* is now before the Court, in the context of an action brought under Section 4 of the Voting Rights Act of 1965.

iting the county's Negro electorate. Appellant's efforts to deprecate the substantiality of its burden are unconvincing. As the court below properly indicated, the essence of the case is whether appellant satisfactorily rebutted the government's evidence [14] that, during the five years preceding the filing of the suit, literacy tests had been used "with the effect of denying or abridging the right to vote on account of race or color" in Gaston County (see A. 448)

B. THE DISTRICT COURT PROPERLY CONCLUDED THAT THE USE OF A LITERACY TEST IN GASTON COUNTY, WHERE NEGROES NOW OF VOTING AGE WERE DISCRIMINATORILY AFFORDED INFERIOR AND INADEQUATE EDUCATIONAL OPPORTUNITIES, HAD THE EFFECT OF ABRIDGING THE RIGHT OF NEGROES TO VOTE ON ACCOUNT OF RACE

Here the district court had before it, as its opinion sets forth in detail, uncontradicted evidence as to differences between white and Negro educational opportunities during the entire period pertinent to this case (A. 453–456).[15] A comparison of the statistics re-

[14] See *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 332, where the Court indicated that the burden was plainly on a jurisdiction seeking to be relieved from coverage to "refute whatever evidence to the contrary [of the allegation of nondiscrimination in the use of tests or devices for the past five years] may be adduced by the Federal Government."

[15] It is an anomaly that a State, like North Carolina, assumes the burden of public education (N.C. Const., Art. IX, § 2), and yet seeks to apply a test to determine the literacy of its citizens. At least where the individuals sought to be tested were educated in the state and the test is a fair one, it would appear that a state was virtually confessing the gross inadequacy of its own educational system by prescribing and administering such a test. See *Bazemore* v. *Bertie County Bd. of Elections*, 254 N.C. 398, 403, 119 S.E. 2d 637, 641, where the North Carolina Supreme Court stated that "there is little excuse for illiteracy in

lating to white and Negro educational opportunities as of the 1918–1919 school year is instructive.[16] The average annual salary of a Negro teacher that year was $113.64 as compared to $556.90 for a white teacher. The value of school property per Negro pupil was $12.74, as compared to $58.84 per white pupil. While Negroes constituted 21.77 percent of the pupil population, the salaries paid to their teachers amounted to only 3.9 percent of the total funds spent for teacher salaries and their schools were only valued at 5.6 percent of the total valuation of all school properties.

The state's figures for the 1918–1919 school year show that 98 percent of the white teachers—168 out of 171—but only 5 percent of the Negro teachers—two out of 38—held state teaching certificates.[17] The remaining 95 per cent of the Negro teachers held second grade certificates, described in the Biennial Report of the State Superintendent for that year as "the lowest permit issued in the State * * * not a certificate in the proper sense, but merely a permit to teach until

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this State [since] North Carolina has a constitutional obligation to provide for the education of all its children," but perceived no incongruity in applying literacy tests despite this obligation.

[16] Fully 35 percent of the current voting-age population of the County were of school age in the pre-1918–1919 period (A. 454 n. 16).

[17] See Government Exhibit No. 2, which is comprised of excerpts from the Biennial Reports of the Superintendent of Public Instruction of North Carolina.

someone can be found who is competent to take the place." During this same period, 68 percent of the Negro children, but only 30 percent of the whites, attended one-room rural schoolhouses in which pupils in all grades were educated simultaneously by one teacher.

The conclusion is inescapable that a Negro born in 1912, who was in the first grade in 1918, had far less opportunity to acquire basic reading and writing skills than his white counterpart. The record is clear that, at least before 1930, educational disparities in Gaston County were dramatic and the Negro schools were not equipped to offer more than the most rudimentary educational training to the Negro children residing in the County.[18] Over 50 percent of the current Negro voting-age population of Gaston County was enrolled in the public schools during the pre-1930 period, and the evidence further showed that 30 per-

[18] The County sought, through the testimony of Thebaud Jeffers (A. 169), to establish that, even though inferior, the Negro schools were adequate to prepare one to pass the North Carolina literacy test. But Mr. Jeffers first came to Gaston County in 1932 and he had no knowledge about the quality of the Negro schools prior to that period of time (A. 142, 166). The statistics in the record relate that, though still inferior, beginning in approximately 1930 the Negro schools were upgraded to the extent that the disparities between those schools and the white schools were somewhat narrowed. Thus, at the very least, we submit that appellant failed to meet its burden of rebutting the government's evidence of the inadequacy of the educational opportunities afforded Negroes prior to 1930. See *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 332.

cent of this population group achieved only a fourth-grade education (A. 454, N. 16, 455).

On the basis of these facts and others showing that Negroes now of voting age were afforded an education substantially inferior to that made available to their white contemporaries and that significant numbers of Negroes had attained levels of educational achievement substantially below that of their white contemporaries, the district court concluded that the imposition, during the five years preceding the filing of this action, of any literacy test would necessarily have had "the effect of abridging the right of many Negroes to vote on account of race or color" (A. 458).

In the absence of an effective rebuttal, that conclusion is unassailable. It is perhaps enough that the net effect of administering a literacy test for voting, however fairly, has been—and still would be—to disfranchise substantially more Negroes than whites. But whatever the significance of that fact if the result were entirely attributable to causes over which the state and its subdivisions had had no control, there can be no such issue here. The educational disparities prevailing in Gaston County are of course directly traceable to governmental policies of racial segregation and inequality for which official responsibility is inescapable. In these circumstances, as the district court said, "[i]t would be incongruous to allow a state or county to disenfranchise people for an ability to

pass a literacy test, when that ability was denied them as a result of discriminatory state action" (A. 459). That is, of course, merely an application of the well established constitutional rule that the Fifteenth Amendment precludes a state from disenfranchising a racially distinct group of citizens because they have not attained a status which is made a prerequisite for voting, when it has denied them an equal opportunity to achieve that status. See *Guinn* v. *United States*, 238 U.S. 347, and *Lane* v. *Wilson*, 307 U.S. 268. See also *Gomillion* v. *Lightfoot*, 364 U.S. 339, 346, 347–348.[19]

The same principle governs under the Voting Rights Act. In terms, Section 4 notices a discriminatory "effect," regardless of "purpose". And, as we

[19] In *United States* v. *State of Mississippi*, 229 F. Supp. 925, 990–993 (S.D. Miss.), reversed, 380 U.S. 128, Circuit Judge Brown, in a dissenting opinion which was generally approved by this Court, set forth in detail educational disparities which he regarded as "a direct element" of the government's case in challenging Mississippi's interpretation test for voting. Similarly, in *United States* v. *State of Texas*, 252 F. Supp. 234, 245 (W.D. Tex.), affirmed 384 U.S. 155, Circuit Judge Thornberry, in a case involving the constitutionality of the Texas poll tax, held that proof of educational disparities was a "legitimate means" for reaching a conclusion that an otherwise racially neutral requirement may be discriminatory. And in *Franklin* v. *Parker*, 223 F. Supp. 724 (M.D. Ala.), modified on other grounds, 331 F. 2d 841 (C.A. 5), a Negro had been denied admission to the graduate school of Auburn University on the ground that the college from which he had graduated was not accredited; all accredited colleges in Alabama were, however, limited to white students. Observing that a requirement of graduation from an accredited college, standing alone, was reasonable, the court found that its application where Negroes had been denied the opportunity to attend an accredited college as a result of discriminatory state action denied the plaintiff equal treatment on account of race.

have already pointed out, the existence of inferior educational opportunities for Negroes was a key consideration leading to the congressional determination to suspend literacy tests in the jurisdictions which fell within the coverage formula (*supra*, pp. 20–22). It was the view of the Attorney General and of Congress that it was unfair to allow a jurisdiction to disenfranchise people for a lack of capacity to pass a literacy test, when that capacity was denied them as a result of discriminatory governmental action. As the Senate Judiciary Committee put it (Senate Report, p. 16):

> [T]he educational differences between whites and Negroes in the areas to be covered by the prohibitions—differences which are reflected in the record before the committee—would mean that equal application of the tests would abridge 15th amendment rights. This advantage to whites is directly attributable to the States and localities involved.[20]

Unless Gaston County is to be allowed to do by indirection what it is forbidden to do directly by the Fifteenth Amendment (cf. *Lane* v. *Wilson*, *supra*, 307 U.S. at 275, *Terry* v. *Adams*, 345 U.S. 461) and disenfranchise Negroes for state-imposed educational dis-

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[20] A comparable statement is that of Representative (now Senator) Goodell addressing the House (111 Cong. Rec. 5363):

"A State cannot in justice deprive any of its citizens of the vote because they have not achieved a given level of literacy and at the same time deny them the means of becoming literate."

See also, *e.g.*, 111 Cong. Rec. 15991 (Rep. Tunney), 16035 (Rep. Fraser), 16274 (Rep. Moorhead).

abilities, the teaching of prior judicial decisions and the legislative history of the statute surely supports the judgment below.[21]

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[21] Gaston County argues in its brief (pp. 18–19) that Congress did not intend to suspend literacy tests in all states in which racially segregated school systems were at one time, or still are, extant, and that the opinion of the district court "obviates any opportunity for reinstatement of literacy tests in any state that has had a dual educational system." We submit that this is a rather selective assessment of what Congress accomplished in enacting the 1965 Act. Congress did suspend literacy tests in low registration states and counties in which such tests were in effect—through a formula which, by design, reached many dual-system jurisdictions—and, as we have shown, educational disparities were a significant reason for taking this action. Without abolishing literacy tests in dual-system states as such, Congress provided the framework for an adjudication on a case-by-case basis—in those states or sudivisions effected by the Voting Rights Act and seeking their release from its coverage—of the question which appellant seeks to avoid, *i.e.*, whether the *effect* of the use of a test, in the context of inferior educational opportunities available to Negroes in such suing states or subdivisions, is racially discriminatory. Whatever may be the situation in some other state or county which may seek release from the Act, the proof with respect to Gaston County compels a finding that the educational opportunities afforded its older Negro citizens were so inadequate and at the same time so inferior to those afforded to white persons, that, to quote the majority of the Senate Judiciary Committee, even "equal application of the tests would abridge 15th Amendment rights" (Senate Report, p. 16). As the court here pointed out, it sought to lay down no "all encompassing rule" but simply "reviewed the evidence adduced by the Government *in this case* and concluded that the Negro schools [in Gaston County] were of inferior quality in fact as well as in law" (A. 460, n. 23).

C. THE MANNER IN WHICH THE LITERACY TEST WAS ADMINISTERED HAD THE EFFECT OF CURTAILING NEGRO REGISTRATION WITHOUT HOLDING WHITE REGISTRATION WITHIN COMPARABLE LIMITATIONS

As this Court noted in *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 334, a key factor in the decision of Congress to suspend literacy tests in areas where a low voter turnout implied the probability of discrimination was

> the feeling that states and political subdivisions which had been allowing white illiterates to vote for years could not sincerely complain about the "dilution" of their electorates through the registration of Negro illiterates. Congress knew that continuance of the tests and devices in use at the present time, no matter how fairly administered in the future, would freeze the effect of past discrimination in favor of unqualified white registrants. * * *

Few jurisdictions in any part of the country could have a more permissive record with regard to white registrants than Gaston County, North Carolina. Large numbers of white illiterates were allowed to register during the five-year period prior to the institution of the instant suit. And it is relevant that this was a direct continuation of a prior policy which was articulated in North Carolina's grandfather clause, which, in tandem with the literacy test, was orginally devised [22] as a means of circumventing the Fifteenth Amend-

[22] Evidence of original purpose is admissible in an action of this kind (*Apache County* v. *United States*, 256 F. Supp. 903, 910–911 (D. D.C.)), and sheds light on contemporary practices (*United States* v. *State of Louisiana*, 225 F. Supp. 353, 363, 381 (E.D. La.), affirmed, 380 U.S. 145, 152).

ment. See *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 310–311; A. 449, n. 11. The role once played by the grandfather clause in exempting white persons from the requirements of state law has more recently been performed by the leniency of the registrar.

North Carolina law vests considerable discretion in the individual registrar with respect to the registration of voters. The State Constitution (Art. VI, § 4) requires every applicant for registration to be "able to read and write any section of the Constitution," and the law leaves to the registrar the judgment whether a particular applicant is able to do so. N.C. Gen. Stat. § 163–28. By decision of the Supreme Court of North Carolina, the literacy test need not be given to every applicant:

> It would be unrealistic to say that the test *must* be administered to all applicants for registration. For instance, it would be folly to require professors and teachers of political science, of known and recognized capabilities, to submit to the test. The statute only requires that the applicant *have* the ability. If the registrar in good faith knows that applicant has the requisite ability, no test is necessary. [*Bazemore* v. *Bertie County Board of Elections,* 254 N.C. 398, 406, 119 S.E. 2d 637, 643].

The law neither forbids nor requires registrars to register applicants in their homes. It neither compels them to go to registrants' homes to register them nor prohibits them from doing so. It permits, but does not compel, registrars to invite people to register.

All of these elements of discretion came into play

in Gaston County during the five-year period preceding the institution of this suit. The greatest area of discretion relates to the actual determination of literacy. The North Carolina Supreme Court has held in the *Bazemore* case, *supra*, that the requisite ability to read and write any section of the State Constitution (254 N.C. at 402, 119 S.E. 2d at 641)

> demands more than the mere ability to write one's own name and to recognize a few simple words * * * The standard or level of performance is the North Carolina Constitution. To be entitled to register as an elector one must be able to read and write any section thereof. Admittedly, the standard is relatively high, even after more than half a century of free public schools and universal education. * * *

The evidence in this case showed, however, that the actual policy of the County Board of Elections has been to interpret this requirement of North Carolina law with exceptional leniency; it likewise shows that the exercise of such leniency in practice, with respect to any given applicant, was a matter to be determined entirely, as a discretionary matter, by each individual registrar (A. 29, 31, 76).

The result is widespread registration of illiterate whites, at the present time, throughout the County (see note 6, *supra*). White citizens, registered in 18 different precincts widely scattered throughout the County from Cherryville in the northwest corner to Union in the southeast, including several in Gastonia as well, testified as to their inability to read and write more than their names and at most a few other words.

Twenty-one could not read anything at all except their names (see note 6, *supra*). At least fifteen of twenty-nine white deponents of low literacy affirmatively told the registrars at the time of their registration that they could not read or write (see A. 448–449). Moreover, there was further evidence on the basis of which the district court noted that those who testified "were not the only whites who were permitted to register although they were incapable of satisfying the literacy requirements of North Carolina law" (A. 449).

Publicity surrounding the 1962 county-wide reregistration did not, however, focus on this leniency; rather, it emphasized the fact that election officials were enforcing the North Carolina literacy law (A. 449, n. 10). The county election officials took no steps to notify the public of the extent to which they or the registrars were prepared to stretch the literacy requirement, nor did they publicize the fact that, for white applicants at least, the literacy requirement would be waived (A. 73). What is more, during the same period that white illiterates were being registered throughout Gaston County, Negro applicants for registration were required to demonstrate literacy. Negroes active in voter registration work were conducting literacy clinics (A. 417), or were screening illiterates from among those they encouraged to register (A. 458, n. 21); one Negro leader was told by a registrar not to bring illiterates to register (A. 314–315); other Negroes did not attempt to register because they believed they were insufficiently educated (A. 110, 458, n. 21). Even some of the Negro business-

men and professionals distributed in the Negro community copies of the test to be studied in preparation for registration (A. 110). In short, Negroes were led to believe that the literacy test was an actual standard for registration. The discriminatory impact of holding that belief is obvious.

Appellant sought to meet this proof of a rather general waiver of the literacy requirement for whites by trying to establish that the test was waived for Negroes as well as whites, and, to this end, it offered the depositions of several registered, low-literacy Negroes. However, every Negro witness of low literacy called to testify on behalf of the County was registered in Precinct No. 7 of the City of Gastonia—the only precinct in which there is now and ever was a Negro registrar, in which three Negro deputy registrars were appointed in 1962, and in which night registration was conducted at the request of Negro leaders. Appellant did not show any waiver of the test for a single Negro outside the City of Gastonia, or even outside the one predominantly Negro precinct to which the evidence of cooperation with Negro groups is restricted.

Although the district court did not base its finding that Gaston County's enforcement of the literacy test had had a discriminatory effect upon the right of its Negro citizens to vote on the ground of discriminatory application,[23] and its finding of a discriminatory

[23] Rather, the court below discussed the respective contentions on this point and, in response thereto, stated that "we find it unnecessary to determine whether purposeful discrimination within the meaning of Section 4(a) has been practiced in Gas-

effect because of inferior educational opportunities is a fully adequate ground upon which to affirm the judgment, we believe that the practice of waiving the literacy test for whites without publicizing the policy of waiver in the Negro community similarly had the proscribed discriminatory effect.[24]

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ton County since April 1962" (A. 450). However, it was not the government's intention to limit the evidence regarding discriminatory application of the literacy requirement to the question whether those practices were simply "for the purpose" of denying or abridging the right to vote on racial grounds. Rather, apart from whether "purposeful discrimination" was adequately shown, it is our submission that this evidence at least shows that literacy tests were applied in Gaston County during the critical five-year period "with the effect" of denying or abridging the right of Negroes to vote. That, under Section 4(a), is a sufficient basis for denying appellant the relief sought, and provides an indepedent ground for affirmance of the judgment below.

[24] Gaston County can derive no benefit from Section 4(d) of the Act (42 U.S.C. 1973b(d) (see App. Br., p. 19.) The district court found that Gaston County's literacy test had the effect of abridging the right to vote on account of race not because of isolated individual incidents of discrimination, but because the use of the test in the context of Gaston County's denial of equal educational opportunities to Negroes, made registration for Negroes, as a class, more difficult than it was for whites. Moreover, the waiver of the literacy requirement for white persons in all parts of the county cannot reasonably be characterized as being composed of incidents which were "few in number." Leniency by the registrars was, on the contrary, simply a continuation of a tradition first implemented by the grandfather clause.

In order to come within the terms of Section 4(d), appellant was also required to show that the discrimination has been promptly and effectively corrected by state or local action, that its continuing effect has been eliminated, and that there is no reasonable probability of recurrence. In view of the proof

II. GASTON COUNTY FAILED TO MEET ITS BURDEN OF PROVING THAT ENFORCEMENT OF THE LITERACY TEST BY MUNICIPAL REGISTRARS OPERATING WITHIN ITS TERRITORIAL LIMITS DID NOT HAVE A DISCRIMINATORY PURPOSE OR EFFECT

The Voting Rights Act suspends the use of literacy tests in *all* elections—federal, state and local—within a covered State or political subdivision. Thus, the certification of Gaston County prohibited the use of a literacy test as a precondition to registration or voting not only in county-wide elections, supervised by the Gaston County Board of Elections, but also in all municipal, township and other elections conducted within the County's boundaries; and, conversely, if the County were released from the Act's coverage by declaratory judgment, municipal regis-

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of educational discrimination, none of these requirements has been met. A literacy test if reintroduced would continue to bear more heavily on Negroes than on whites. With respect to the policy of selective waiver, no corrective efforts have been made; on the contrary, the Chairman of the Board of Elections explicitly testified that he had no plans for removing from the rolls illiterates who were registered while the test was in effect (A. 72) and, in fact, that he had no intention of changing prior practices at all (A. 73).

Section 4(d) serves a useful purpose. If, for example, the literacy test had been given to all applicants, if all had received equal educational opportunities, and if a few isolated Negroes had been originally rejected for registration but then registered, with adequate safeguards against recurrence, the situation would be one of the kind to which Section 4(d) is addressed See *Apache County* v. *United States*, 256 F. Supp. 903 (D. D.C.). Where, as here, the issue pertains to an entire pattern of conduct by the appellant, as to which no corrective steps are contemplated, Gaston County can obtain no assistance from this provision.

trars would be legally free to resume the application of a literacy test. Under the statute, therefore, it was incumbent on the County, as a part of its *prima facie* case, to make a showing that the literacy test has not been used during the relevant period by any registrar or election board operating within the County with a discriminatory purpose or effect (see A. 463–465). Appellant has offered no such proof; rather, the County's witnesses below disclaimed all knowledge of, or responsibility for, registration for municipal elections.

In its brief the County contends that no such proof is required (pp. 22–23), asserting that the Act never became effective with respect to the municipalities in Gaston County because none of them was separately certified by the Attorney General and the Director of the Census. It asserts that this construction should be adopted because the County cannot reasonably be expected to provide proof concerning the racial fairness of registration and elections within its boundaries which are not subject to its direct supervision. This contention misconceives the scheme of the Act.

Section 4 of the Voting Rights Act provides in pertinent part that "no citizen shall be denied the right to vote in any Federal, State or local election because of his failure to comply with any test or device * * * in any political subdivision [which has been certified under the Act]." Certainly the literal application of these words applies to municipal elec-

tions. Thus, it seems plain that a municipal registrar in Cherryville (in Gaston County) may not deny the right to vote (for failure to pass a literacy test) to a potential municipal elector in elections *in* Gaston County, when the County has been so certified. Moreover, the portion of this section dealing with actions to remove the restrictions of the Act makes it clear that the word "in" is used in a geographical or territorial sense; it is there provided that no declaratory judgment may issue if any court of the United States has entered a judgment, during the preceding five years, to the effect that the right to vote has been discriminatorily denied or abridged "anywhere in the territory of such plaintiff" (42 U.S.C. 1973b(a)).

Appellant's proposed construction of the Act is inconsistent not only with the statutory language, but also with its legislative history [25] and its administra-

[25] That the framers of the law had no intention of enfranchising a citizen for one election but not for another is established by an exchange between Attorney General Katzenbach and Chairman Celler of the House Judiciary Committee. After a discussion of the question of what constituted a certifiable subdivision, in which the Attorney General indicated that, in southern states, this would ordinarily be a county, the following colloquy ensued:

> *The Chairman.* This bill covers Federal, State, and municipal elections. Would it cover an election for a school board?
>
> *Mr. Katzenbach.* Yes; it would, Mr. Chairman. Every election in which registered electors are permitted to vote would be covered by this bill [*House Hearings*, p. 21].

See also *id.* at 50; *Senate Hearings*, p. 162; Senate Report, p. 16.

tive[26] and judicial construction.[27] It is, moreover, wholly unrealistic. It implies that the Act will operate to eliminate literacy test barriers only after a separate certification by the Attorney General and by the Director of the Census of each of Gaston County's eleven municipalities; and, presumably, every school election district, township and hamlet in each of six covered states, and in some fifty other covered counties. In the absence of an express directive, we cannot assume the Congress meant to establish such a complex and unworkable rule.

Appellant, however, contends that an unreasonable burden is cast upon it if it is required to prove, *prima facie,* that the use of tests everywhere within its boundaries has been without racially discriminatory effect. But that is certainly the burden which a state,

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[26] The administrative construction of the statute by the Civil Service Commission, the agency charged with its enforcement, is likewise to the effect that certification of a state or subdivision suspends tests or devices for all elections within the unit. See, *e.g.*, 45 C.F.R. § 801.204, Appendix B. The Commission's construction of the statute is, of course, entitled to great weight. See *Udall* v. *Tallman*, 380 U.S. 1, 16.

[27] *United States* v. *Mississippi*, 256 F. Supp. 344, 349 (S.D. Miss.) Cf. *Allen* v. *State Bd. of Elections*, Nos. 3, et al. this Term, decided March 3, 1969, wherein the Court held that the adoption of new voting procedures by counties within the certified state of Mississippi came within the proscriptions of Section 5 of the Act by virtue of the State's coverage under Section 4, and *Hadnott* v. *Amos*, No. 647, this Term, decided March 25, 1969, wherein a similar result was reached in a case arising in Alabama.

covered as a whole, must assume: the state may not obtain exemption by demonstrating that some central election board has applied a literacy test without discriminatory purpose or effect, albeit local officials have done otherwise. And the same rule governs when the applicant for exemption is a county, separately covered. The fact is that the Voting Rights Act adopts a geographical and not a jurisdictional standard; and its provision for suit by the covered political subdivision, here the County, rather than suits by or on behalf of any particular election authority, is entirely consistent with the structure of the coverage sections.

The burden upon the County to submit evidence concerning these elections is in no respect unreasonable and could easily have been undertaken by simply offering the testimony of the several municipal registrars. Having alleged in its complaint, following the statutory language, that "* * * no test or device * * * has been used in the plaintfff county during the five (5) years preceding * * * with the effect of * * * abridging the right to vote on account of race or color," it offered evidence with respect to the use of tests by only one of at least twelve election authorities which functioned within its borders. Accordingly, appellant has failed in proving the central allegation of its complaint. While the Court need not reach this issue in order to affirm the judgment below, we believe, as the concurring opinion of Judge Gasch in

the district court points out, this defect alone is fatal (A. 465) and precludes the issuance of the declaratory judgment sought by the County.[28]

[28] We note, in conclusion, that because illiterate persons are now registered voters in Gaston County, the United States raised in its Answer below the defense that, independently of the provisions of the Voting Rights Act, the reinstitution of a literacy test would be inconsistent with the provisions of Section 101(a) of the Civil Rights Act of 1964, as amended by Section 15(a) of the Voting Rights Act of 1965 (42 U.S.C. 1971(a)(2)(A)), at least in the absence of a complete re-registration of all voters which would purge registered illiterates from the rolls. This section provides in pertinent part that no person acting under color of law shall,

> in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote. * * *

Since the plain language and purpose of this section precludes appellant from using any test different from or more exacting than that in effect in the County prior to the Voting Rights Act, appellant is barred, quite apart from the effect of the Voting Rights Act, from once again conditioning registration on literacy. Cf. *United States* v. *Duke*, 332 F. 2d 759 (C.A. 5); *United States* v. *State of Louisiana*, 225 F. Supp. 353 (E.D. La.), affirmed, 380 U.S. 145; *United States* v. *Cox*, 11 Race Rel. L. Rep. 269, 288 (N.D. Miss.).

The district court, while agreeing with our argument that amended Section 101(a) precludes reinstitution of a literacy test in the absence of a total reregistration (A. 450–452), did not rest its decision on this ground. Indeed, such a finding would not defeat the claim for exemption from the interdictions of the Voting Rights Act, and the issue becomes revelant only if it is found that a declaratory judgment in favor of appellant is warranted. In that event, Section 101(a) would prevent the court from "licensing" the reinstitution of a literacy test in Gaston County.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted.

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SUPREME COURT OF THE UNITED STATES

No. 701.—October Term, 1968.

Gaston County, North Carolina, Appellant, *v.* United States.	On Appeal From the United States District Court for the District of Columbia.

[June 2, 1969.]

Mr. Justice Harlan delivered the opinion of the Court.

The Voting Rights Act of 1965 suspends the use of any test or device[1] as a prerequisite to registering to vote in any election, in any State or political subdivision which, on November 1, 1964, maintained a test or device, and in which less than 50% of the residents of voting age were registered on that date or voted in the 1964 presidential election.[2] Suspension is automatic upon publication in the Federal Register of determinations by the Attorney General and the Director of the Census, respectively, that these conditions apply to a particular governmental unit. If the unit wishes to reinstate the test or device, it must bring suit against the Government in a three-judge district court in the District of Columbia and prove "that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color,"

[1] "The phrase 'test or device' shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class." Voting Rights Act of 1965, § 4 (c), 79 Stat. 438, 42 U. S. C. § 1973b (c) (1964 ed., Supp. III).

[2] § 4 (a), 79 Stat. 437, 42 U. S. C. § 1973b (a) (1964 ed., Supp. III).

§ 4 (a). The constitutionality of these provisions was upheld in *South Carolina* v. *Katzenbach,* 383 U. S. 301 (1966).

On March 29, 1966, the Attorney General and the Director of the Census published the necessary determinations with respect to appellant, Gaston County, North Carolina. Use of the State's literacy test [3] within the County was thereby suspended. On August 18, 1966, appellant brought this action in the District Court, making the requisite averments and seeking to reinstate the literacy test.

The United States opposed the granting of relief on the ground, *inter alia,* that use of the test had "the effect of denying or abridging the right to vote on account of race or color" because it placed a specially onerous burden on the County's Negro citizens for whom the County had maintained separate and inferior schools.

After a full trial on this and other issues, the District Court denied the relief requested, holding that appellant had not met its burden of proving that its use of the literacy test, in the context of its historic maintenance of segregated and unequal schools, did not discriminatorily deprive Negroes of the franchise.[4] *Gaston County* v. *United States,* 288 F. Supp. 678 (1968). The court made clear:

> "[W]e do not rely solely on the fact that the schools in Gaston County have been segregated during the

[3] N. C. Const., Art. VI, § 4, provides: "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language." At all times relevant to this case, N. C. Gen. Stat. § 163–28 mirrored the constitutional provision. In 1967 the statute was renumbered § 163–58 and its wording was amended in minor aspects.

[4] Judge Wright wrote the majority opinion, in which Judge Robinson joined. Judge Gasch dissented from the court's holding, see *infra,* at 5–6, but would have denied appellant relief for different reasons.

period when persons presently of voting age were of school age, but instead have reviewed the evidence adduced by the Government *in this case* and concluded that the Negro schools were of inferior quality in fact as well as in law." *Id.*, at 689–690, n. 23.

Pursuant to § 4 (a) of the Act, the County appealed directly to this Court. We noted probable jurisdiction, 393 U. S. 1011 (1969), and we affirm for substantially the reasons given by the majority in the District Court.

Appellant contends that the decision of the District Court is erroneous on three scores: first, as a matter of statutory construction and legislative history, the court could not consider Gaston County's practice of educational discrimination in determining whether its literacy test had the effect of discriminatorily denying the franchise; second, on the facts of this case, appellant met its burden of proving that the education it provided had no such effect; and third, whatever may have been the situation in the past, Gaston County has not fostered discrimination in education or voting in recent years. We consider these arguments in turn.

I.

The legislative history of the Voting Rights Act of 1965 discloses that Congress was fully cognizant of the potential effect of unequal educational opportunities upon exercise of the franchise. This causal relationship was, indeed, one of the principal arguments made in support of the Act's test-suspension provisions. Attorney General Katzenbach testified before the Senate Committee on the Judiciary:

"It might be suggested that this kind of [voting] discrimination could be ended in a different way—by wiping the registration books clean and requiring

all voters, white or Negro, to register anew under a uniformly applied literacy test.

". . . [S]uch an approach would not solve, but would compound our present problems.

"To subject every citizen to a higher literacy standard would inevitably work unfairly against Negroes—Negroes who have for decades been systematically denied educational opportunity equal to that available to the white population. Although the discredited 'separate but equal' doctrine had colorable constitutional legitimacy until 1954, the notorious and tragic fact is that educational opportunities were pathetically inferior for thousands of Negroes who want to vote today.

"The impact of a general reregistration would produce a real irony. Years of violation of the 14th amendment right of equal protection through education, would become the excuse for continuing violation of the 15th amendment right to vote." Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., 22–23.

Mr. Katzenbach testified similarly before the House Committee. See Hearings on H. R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., 18–19, 49. And significantly, the Report of the Senate Judiciary Committee explicitly asserted:

"The educational differences between whites and Negroes in the areas to be covered by the prohibitions—differences which are reflected in the record before the committee—would mean that equal application of the tests would abridge 15th amendment rights. This advantage to whites is directly attrib-

utable to the States and localities involved." S. Rep. No. 162, 89th Cong., 1st Sess., 16.[5]

Appellant's response to this seemingly unequivocal legislative history is, in essence, that it proves too much. As Judge Gasch put it in his separate opinion below:

> ". . . [I]t is clear that the Voting Rights Act was primarily directed at the Southern states. In the Act, the Congress allowed a fair opportunity for a certified unit to rebut the presumption that its literacy test was used in a discriminatory manner. Thus, sections 4 and 5 of the Act provide a procedure whereby a State or political subdivision which has been the subject of a certification under the Act, may petition this Court for declaratory relief to reinstate its test before the 5-year suspension period has elapsed. Sections 4 and 5 will provide no remedy to a Southern state, however, if, as the majority finds, a segregated school system coupled with census data showing higher literacy and education for whites than for Negroes, is sufficient to preclude recovery under the Act. We can take judicial notice that the segregated school system was the prevailing system throughout the South. If this is what Congress had in mind, it would have stated that no test could be used where literacy was higher

[5] In view of this obvious relationship, and acknowledgment of it by the Attorney General and Congress, it is of no consequence that the Act was explicitly designed to enforce the Fifteenth, and not the Fourteenth, Amendment. See, *e. g.*, Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., 141–142; Hearings on H. R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., 49–50, 66, 102. The Act was, of course, concerned solely with voting rights, and discrimination in education bears on the Act only insofar as it may result in discriminatory abridgment of the franchise.

> among whites than among Negroes. I do not believe that Congress intended that the Act be interpreted in such a way as to render §§ 4 and 5 inapplicable to Southern states or those which had segregated educational systems." 288 F. Supp., at 690, 695.

Appellant's contentions fundamentally misconceive the import of the majority opinion below, as we read it. That opinion explicitly disclaims establishing any *per se* rule. The court's decision is premised not merely on Gaston County's historic maintenance of a dual school system, but on substantial evidence that the County deprived its black residents of equal educational opportunities, which in turn deprived them of an equal chance to pass the literacy test. Consistent with the court's holding, a State or subdivision may demonstrate that although its schools suffered from the inequality inherent in any segregated system, see *Brown* v. *Board of Education*, 347 U. S. 483 (1954), the dual educational system had no appreciable discriminatory effect on the ability of persons of voting age to meet a literacy requirement.

It is of no consequence that Congress *might* have dealt with the effects of educational discrimination by employing a coverage formula different from the one it enacted. The coverage formula chosen by Congress was designed to be speedy, objective, and incontrovertible;[6] it is triggered appropriately by voting or registration figures. The areas at which the Act was directed

> "share two common characteristics incorporated by Congress into the coverage formula: the use of tests

[6] Section 4 (b) of the Act makes the determinations by the Attorney General and the Director of the Census unreviewable in any court. "[T]he findings not subject to review consist of objective statistical determinations by the Census Bureau and a routine analysis of state statutes by the Justice Department. These functions are unlikely to arouse any plausible dispute." *South Carolina* v. *Katzenbach*, 383 U. S. 301, 333 (1966).

and devices for voting registration, and a voting rate in the 1964 presidential election of at least 12 points below the national average. Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetuating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters. Accordingly, the coverage formula is rational in both practice and theory." *South Carolina* v. *Katzenbach*, 383 U. S. 301, 330 (1966).

In contrast, a coverage formula based on educational disparities, or one based on literacy rates, would be administratively cumbersome: the designation of racially disparate school systems is not susceptible of speedy, objective, and incontrovertible determination; and the Bureau of the Census collects no accurate county statistics on literacy. Furthermore, a coverage formula based on either of these factors would not serve as an appropriate basis for suspending all of the tests and devices encompassed by § 4 (c) of the Act—for example, a "good moral character" requirement.[7]

We conclude that in an action brought under § 4 (a) of the Voting Rights Act of 1965, it is appropriate for a court to consider whether a literacy or educational requirement has the "effect of denying the right to vote on account of race or color" because the State or subdivision which seeks to impose the requirement has maintained separate and inferior schools for its Negro residents who are now of voting age.[8]

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[7] See n. 1, *supra;* Hearings on H. R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., 30–31.

[8] We have no occasion to decide whether the Act would permit reinstatement of a literacy test in the face of racially disparate edu-

II.

In an action for declaratory relief under § 4 (a) of the Voting Rights Act of 1965, the plaintiff carries the burden of proof. The plaintiff cannot be expected to raise and refute every conceivable defense, however, cf. Federal Rules of Civil Procedure, Rule 9 (c), and it was incumbent upon the Government in the case at bar to put into issue its contention that appellant's use of the literacy test, coupled with its racially segregated and unequal school system, discriminatorily deprived Negroes of the franchise. The plaintiff-appellant would then have the burden of proving the contrary. See *South Carolina* v. *Katzenbach*, 383 U. S. 301, 332 (1966). The Government did place this contention in issue, and in support thereof it introduced considerable evidence, which we now summarize.

All persons of voting age in 1966 who attended schools in Gaston County[9] attended racially separate and unequal schools.[10] Between the years 1908 and 1929, when approximately 45% of the voting age population was of school age, the salaries of Negro teachers in the County ranged from a low of about 20% to a high of about 50% of those of their white colleagues. In 1919,

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cational or literacy achievements for which a government bore no responsibility.

[9] We assume, and appellant does not suggest otherwise, that most of the adult residents of Gaston County resided there as children. Cf. Bureau of the Census, 1960 Census of Population, Vol. I, pt. 35, table 39. It would seem a matter of no legal significance that they may have been educated in other counties or States also maintaining segregated and unequal school systems.

[10] *Gaston County* v. *United States*, 288 F. Supp. 678, 686 (1968). Unless otherwise indicated, the facts and statistics set out below, which are not controverted, appear in the opinion of the District Court, 288 F. Supp., at 686–687, or in Government's Exhibit No. 2 (Excerpts from the Reports of the Superintendent of Public Instruction of North Carolina).

when uniform teacher certification was first required in North Carolina, 98% of the white teachers, but only 5% of the Negro teachers, qualified for regular state teaching certificates. The remaining 95% of the Negro teachers held "second grade" certificates. The Biennial Report of the State Superintendent of Public Instruction, 1918–1920, described a second grade certificate as "the lowest permit issued in the State. It is not a certificate in the proper sense, but merely a permit to teach until someone is found who is competent to take the place."

During this same period, the per-pupil valuation of Negro school property in the County ranged from 20% to about 40% of that of the white schools. A much higher proportion of Negro than of white children attended one-room, one-teacher, wooden schoolhouses which contained no desks.

By the 1938–1939 school year, Negro teachers' salaries had increased to about 70% of that of white teachers, and by the 1948–1949 school year, salaries were almost equal. At this later date, the per-pupil value of Negro school property was still only about one-third that of the white schools.

Of those persons over 25 years old at the time of the 1960 census, the proportion of Negroes with no schooling whatever was twice that of whites in Gaston County; the proportion of Negroes with four or less years of education was slightly less than twice that of whites.

In 1962, Gaston County changed its system of registration and required a general reregistration of all voters. North Carolina law provides that "[e]very person presenting himself for registration shall be able to read and write any section of the Constitution in the English language." N. C. Const., Art. VI, § 4; see n. 3, *supra*. The State Supreme Court has described this requirement as "relatively high, even after more than half a century of free public schools and universal education," *Bazemore*

v. *Bertie County Board of Education*, 254 N. C. 398, 402, 119 S. E. 2d 637, 641 (1961),[11] and a Negro minister active in voter registration testified that it placed an especially heavy burden on the County's older Negro citizens. Appendix, 131–132. It was publicized throughout the County that the literacy requirement would be enforced. A registrar told a Negro leader not to bring illiterates to register. Some Negroes who attempted to register were, in fact, rejected because they could not pass the test, and others did not attempt to register, knowing that they could not meet the standard.

With this evidence, the Government had not only put its contention in issue, but had made out a prima facie case. It is only reasonable to infer that among black children compelled to endure a segregated and inferior education, fewer will achieve any given degree of literacy than will be so among their better-educated white contemporaries.[12] And on the Government's showing, it was certainly proper to infer that Gaston County's inferior Negro schools provided many of its Negro residents with a subliterate education, and gave many others little inducement to enter or remain in school.

The only evidence introduced by the appellant in rebuttal was the testimony of Thebaud Jeffers, a Negro principal of a Negro high school, who had first come to Gaston County in 1932. He stated that "all of our schools . . . would have been able to teach any Negro child to read and write so that he could read a newspaper, so that he could read any simple material," and so that he could pass the literacy test. Appendix, p. 169.

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[11] Elsewhere in its opinion, the court stated that a registrant must be able to read aloud, as well as copy, a section of the State Constitution. 254 N. C., at 404; 119 S. E. 2d, at 642. Appellant's registrars required only that a registrant copy one of three sentences of the Constitution.

[12] This is, indeed, an inference that appears throughout the Act's legislative history. See *supra*, at 3–5.

The District Court characterized Mr. Jeffers as an "interested witness," and found his testimony "unpersuasive" when measured against the Government's evidence. The court further noted that the principal's knowledge about the school system dated only from 1932, by which time some of the more blatent educational disparities were being reduced. Almost one-half of the county's black adults were of school age well before Mr. Jeffers' arrival.

The Distict Court concluded that appellant had not met the burden imposed by § 4 (a) of the Voting Rights Act of 1965. This was not clearly erroneous.

III.

Appellant urges that it administered the 1962 reregistration in a fair and impartial manner, and that in recent years it has made significant strides toward equalizing and integrating its school system. Although we accept these claims as true, they fall wide of the mark. Affording today's Negro youth equal educational opportunities will doubtless prepare them to meet, on equal terms, whatever standards of literacy are required when they reach voting age. It does nothing for their parents, however. From this record, we cannot escape the sad truth that throughout the years, Gaston County systematically deprived its black citizens of the educational opportunities it granted to its white citizens. "Impartial" administration of the literacy test today would serve only to perpetuate these inequities in a different form.

The judgment of the District Court is

Affirmed.

MR. JUSTICE BLACK dissents for substantially the same reasons he stated in § (b) of his dissenting opinion in *South Carolina* v. *Katzenbach*, 383 U. S. 301, 355, 358.